(2)

No. 91-1100

Supreme Court, U.S.
FILED
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

ROBERTA ANN FUNNELL, *Petitioner,*

v.

ROBERT MARTIN, *Respondent.*

APPENDICES B AND C TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF OKLAHOMA, DIVISION I

ROBERTA ANN FUNNELL
P.O. Box 26172
Oklahoma City, OK 73126
(405)524-4636

Pro se

December, 1991

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IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

Filed in the Supreme Court August 7, 1991

ROBERTA ANN FUNNELL,	)	
Appellant,	)	
vs.	)	No. 72,451
ROBERT MARTIN,	)	
Appellee.	)	

APPLICATION FOR RECALL AND STAY OF
MANDATE TO PERMIT APPLICATION FOR
CERTIORARI TO THE
UNITED STATES SUPREME COURT

To the Honorable Marian Opala, Chief Justice of Oklahoma:

Pursuant to the provisions of Title 28, United States Code, §2101(f), Rules 6 and 7 of the Oklahoma Supreme Court and Rule 3.20 of the Oklahoma Court of Appeals, Appellant Roberta Ann Funnell respectfully presents her application for an order recalling and staying the mandate of this Court entered July 30, 1991, after denial of certiorari to the Court of Appeals by five members of this Court on July 26, 1991, with four members disqualifying, including the Chief Justice. Petitioner knows of no reason requiring said disqualification and by capacity he issues mandates. He thus is the only authority at the state level to whom this request be made.

Petitioner sought certiorari to the Court of Appeals, Division 1 of an unpublished opinion issued March 26, 1991, affirming the district court judgment entered on December 19, 1988. A copy of said opinion is attached hereto as Exhibit "A" and a copy of said judgment is attached as Exhibit "B". The Court of Appeals opinion is a most egregious departure from wholly settled principles of law established by United States Supreme Court opinions and the published intent of Congress well as total misconstruction and misstatement of the content of 42 U.S.C. §1983 under which the action below was taken. The opinion contains a disparity of prior rulings of this Court in response to Petitioner's proposition that the state procedures on disqualification of judges resulted in a direct restraint on her exercise of constitutional rights to access to the courts. This Court previously adopted a federal rule in an unpublished opinion that participation in a hearing waives disqualification

of the judge, ***Andrews, Mosburg, Davis, Elam, Legg & Bixler*** v. ***General Insurance Company of America,*** U.S.W.D.Okl. 148 F. Supp. 304 (1976), then promulgated Rule 15 of Rules for the District Courts which denies access to the jurisdiction of this Court for mandamus but fails to restrain the trial court from proceeding on dispositive motions while the matter of disqualification is unsettled. Rule 15 also contravenes 20 O.S. §1403, which is not allowed by this Court's holding in ***Eberle*** v. ***Dyer Const. Co.,*** 598 P2d 1189 at 1193, (Okl. 1979). The state's failure of equitable adjudication and failure of equitable cognisance and following of its own rules is a denial of due process affecting all Oklahomans. ***U.S.*** v. ***Shaughnessy,*** 374 US 260 at 268. Litigants are placed in a "Catch 22" position.

The opinion invidiously, arbitrarily and capriciously disregards the supremacy of federal law in 42 U.S.C. §1983 cases filed in state courts, applying federal law only to deprive a right secured by the Constitution. Although the opinion affects the constitutional rights of every citizen of Oklahoma, being unpublished it denies their first Amendment right to receive the information, ***Board of Education*** v. ***Price,*** 457 U.S. 853, and to evaluate the conduct of courts, state employees and officials. Public funds have been and will be abused also judicial economy. An order recalling and staying enforcement of the mandate is necessary because lawyers for other defendants have stated their intent to file for attorney fees after this Court's decision thus creating much litigation. The Court of Appeals opinion and the State Attorney General's office, counsel for Appellee, disregarded the federal rules and United States Supreme Court opinion as to the time in which to file for attorney fees. Further reason for recall and stay of mandate is the failure to meet the required appearance of justice by a participant in this Court's denial of Certiorari **thus setting aside the five person opinion should be required.** An order for recall and stay of the mandate is a prerequisite to Petitioner's orderly application to the United States Supreme Court for certiorari.

Prior to year 1988 changes in federal law, the opinion would have qualified for an appeal. The results in this state's courts were a gross miscarriage of justice and blatant defiance of federal supremacy eroding statutory and legal principles, so that when presented to the United States Supreme Court at least four justices will vote to grant review for certiorari in all reasonable probability.

There can be no prejudice to Appellee as he has had no direct cost and if any funds were payable, they would be made to the State

Attorney General's fund from which state judges and members of this Court are defended. Thus members of the judiciary have an "interest" in the award of attorney fees. The reasons for requesting recall and stay of mandate, the facts relied on, abuses by the Attorney General's office, and their opprobrious abuse of process are more fully shown by the affidavit of Petitioner and exhibits thereto are hereto attached. Her Petition and Reply for Writ of Certiorari filed herein are adopted.

In the interest of justice, judicial economy and taxpayers expense, Petitioner prays for a recall and stay of the mandate issued August 30, 1991, but will not be published before September, and for setting aside the denial of write of certiorari based on facts and documents in the attached affidavit.

Respectfully submitted,
(Roberta Ann Funnell)
Roberta Ann Funnell, Pro se
P.O. Box 26172
Oklahoma City, OK 73126
(405) 524-4636

AFFIDAVIT

State of Oklahoma)
) ss:
County of Oklahoma)

Roberta Ann Funnell, of legal age and first being duly sworn says:

1. I am the petitioner in the above-entitled cause, Supreme Court number 72,451 and make this affidavit in support of my Application for Recall and Stay of Mandate to permit Application for Certiorari to the United States Supreme Court. I make this affidavit in good faith.

2. I believe that Justice John Doolin should have disqualified himself from participating in my action CJ-87-5512 in Oklahoma County. He assigned two judges and one of the court reporters to "hear and decide" cause number C-87-607, styled Grand Jury Petition in Pottawatomie County because ***inter alia*** Judge Glenn Dale Carter had to recuse himself as the said Grand Jury Petition

included an investigation of Carter. Copies of Justice Doolin's assignments are attached as Exhibits 1, 2, and 3. A copy of the Grand Jury Petition is attached as Exhibit 4. At the time Justice Doolin assigned Judge Carter, December 1987, the Grand Jury had not adjourned ***sine die*** but was in recess, copy of the Report of the Grand Jury attached as Exhibit 5. I found no order adjourning the Grand Jury when I was finally able to examine the file August 5, 1991.

3. I did not learn of the Grand Jury until seeing an attorney's affidavit in Supreme Court case No. 74,566 in February 1990. I made inquiries in Shawnee when I was there to expedite the transcript of part of the proceedings on August 4, 1988, taken by Judge Carter's reporter whose office is very close to the Court Clerk's. Therefore, I made phone inquiries to the Clerk's office but was told there was no Grand Jury in 1987. I had been advised by several Shawnee residents to be cautious which became evident after a "jostling" incident on the courthouse stairs and being followed by Shawnee police who made that apparent. My inquiries included possible reasons for failure of the Pottawatomie County District Attorney to subpoena twelve female witnesses as asserted in case No. 74,566 and the possible rigging of names submitted for potential grand jurors. Out of concern for the well-being of my elderly aunt for whom I am legal guardian, I desisted from further inquiries in Pottawatomie County until August 5, 1991.

4. My aunt was being harassed and made ill due to a petition filed in CJ-87-5512 by the Attorney General's office which sought to set aside the title to her home, a manufactured house I bought and transferred title to her with myself as guardian. Judge Carter advised bringing said action, which was filed and prosecuted contrary to law.

5. With reference to paragraph 2 supra, I had asked Justice Doolin to disqualify himself from assigning a judge to my case based on my belief that his rulings in ***Funnell*** v. ***Jones*** were biased in favor of attorneys. The case is cited in the Court of Appeals opinion as 737 P.2d 105 (Okl. 1985). During the pendency of that matter I examined the file in the Supreme Court Clerk's office and discovered handwritten notes distorting the facts set forth in a petition which had been superseded. Contrary to law, statements were taken out of context and an assistant's report had written a derogatory "AARGH!!" ON Petition for Rehearing I urged that disqualifications were required by those biased in favor of attorneys. Justice

Doolin did not disqualify and I learned later that his law clerk was the same person who had assailed me for filing actions against attorneys at a Norman cafeteria while said person was in law school. Justice Doolin's opinion failed to hold attorneys to the doctrine of informed consent as he held for doctors earlier. He held the same standards for fraud by an attorney as that of any person "at arm's length" although attorneys are in a fiduciary capacity. Since then when I happen to share the same elevator or chance contact the Justice appears hostile toward me. After Carter's assignment and Justice Doolin refused to disqualify from a Mandamus/Prohibition action I brought against Carter, a courtroom observer made an affidavit that the judge had winked at one of the attorney defendants at a hearing in which Carter insisted I re-present my Motion for his disqualification although contrary to Rule 15. The Attorney General's assistant had argued that my rehearing request under said rule was to be heard by Carter. It was later learned said attorney defendant, Ronald Hudson, had been in the District Attorney's office as an assistant and was a long-time member of the Pottawatomie County Bar. Hudson's attorney was a boyhood friend of Carter and later claimed to have been a member of the bar for some thirty years. I believe these relationships and facts were known to Justice Doolin when the Carter assignment was made. Hudson wrote a letter to Justice Doolin. Hudson was a defendant in the action and was counsel for another defendant. It was alleged that his firm had removed a court file to their office altering my letter to my then-attorney Stephen Jones, which he had attached to his false affidavit against me. There is an appearance that the assignment of Carter, a busy chief judge, was not in good faith and vindictive.

6. From the outset I had questioned Carter's relationship to the then-Attorney General, Robert Henry from Shawnee. I learned on August 5, 1991, that the judge assigned to the Grand Jury had ordered said Attorney General or his designated assistant to appear and advise the Grand Jury. Copy of the only such assignment found is Exhibit 6.

7. Attached as Exhibits 7 and 8 are copies of the only subpoenas issued by the District Attorney found in the file, which appears to support the attorney's affidavit in No. 74,566 that twelve female witnesses were not subpoenaed and the grand jury closed prematurely, particularly when a court reporter was assigned for only two days by the Vice-Chief Justice, copy is Exhibit 9 attached.

8. Further confusion as to the procedure under Rule 15 is set out in my Petition for certiorari adopted herein and the facts attested to as though set forth herein. I sought a re-hearing of my motion for disqualification after learning of the winking episode. The Chief Judge and Presiding Administrative judges of Oklahoma County, who were disqualified, failed to send the matter to then - Chief Justice Hargrave. After I wrote to Justice Hargrave he assigned Judge Brown from Seminole, who at a hearing laughed aloud when B. J. Cooper, attorney for Hudson, not only abusively attacked me, but he turned to a stately woman observer and accused her of being a "stooge" for me. At that time Cooper stated he would file for attorney fees after the action by this Court and others concurred. I believe the conduct of Carter, ***et al.***is contrary to the American Bar Association Rules for Judicial Conduct.

9. The attorneys involved have no qualms about filing pleadings contrary to law. The Attorney General's office recited pages of pleadings in his brief regarding disqualification of judges which had been filed despite an order that all 7th Judicial District judges were disqualified. He failed to advise the Court of Appeals of said order in his attempt to make it appear I had judge shopped and the opinion reiterates the misinformation, although the record shows Appellee and other attempted to keep judicial assignment by removed judge Joe Cannon, contrary to law and court rule. This tendency to abuse judicial economy can only be stopped by a recall and stay of mandate, I believe. Judge Carter spent many trips for hearings after his abuse of my rights on August 4, 1988, as set out in my adopted Petition for Certiorari.

10. All of my legal actions since 1969 have related to concealment of documents and information by attorneys and Appellee, or the altering and/or forging of documents including my signature or that of my former husband now deceased. The attorney for his Estate was involved in the forgery of my signature. His employee signed as notary, another signed as a witness and the attorney signed as the other witness. The out of state property was then sold by another Estate attorney. All of whom were close friends of former judge Joe Cannon. Appellee's counsel admitted in a brief that Appellee had been following the instructions of the Presiding judge, Appellee admitted to removal of my court files to his closet from which they "disappeared" while motions for summary judgment were pending. This is related only for the purpose of stating to the

present Chief Justice the reasons for need of recall and stay of mandate to avoid further abuses.

11. I continue to have problems with my files in Oklahoma County. Documents are file stamped but not entered on or removed from the computer docket despite efforts of the present Court Clerk. I have been informed that there has been an attempt to discredit said Clerk in an effort to obtain appointment of Appellee to the job for the purpose of qualifying for County retirement. The Court of Appeals gave him judicial immunity ***de facto***. Because of outrageous conduct I believe I must take all possible steps in the public interest to alter the course of certain conduct set out herein.

Further affiant sayeth not.

(Roberta Ann Funnell)
ROBERTA ANN FUNNELL

Subscribed and sworn to before me on August 7, 1991.

(Jan L. Rizky)
NOTARY PUBLIC

MY COMMISSION EXPIRES: Feb 9, 1995

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Filed in the District Court, Pottawatomie County, State of Oklahoma: August 24, 1987.

ORDER OF ASSIGNMENT
TO NON-RESIDENT JUDICIAL SERVICE

Acting under the authority vested in me by Article VII, Section 6 and 8(i), Oklahoma Constitution, I hereby assign

Honorable Gordon Melson
District Judge

regularly serving the 22nd Judicial District, to judicial service to be performed in the District Court, Pottawatomie County to hear and decide cause number C-87-607, styled, Grand Jury Petition.

This assignment, to become effective this date, shall extend until final disposition is effected in this case.

Dated July 17, 1987

(John B. Doolin)
Chief Justice

Exhibit 1

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA
Filed in the District Court, Pottawatomie County, State of Oklahoma: August 24, 1987.

ORDER OF ASSIGNMENT
TO NON-RESIDENT JUDICIAL SERVICE

Acting under the authority vested in me by Article VII, Section 6 and 8(i), Oklahoma Constitution, I hereby assign

Honorable Woodrow George
Retired District Judge

to judicial service to be performed in the District Court, Pottawatomie County to hear and decide cause number C-87-607, styled, Grand Jury Petition.

This assignment, to become effective at 9:00 a.m., on Tuesday, August 25, 1987 and shall extend until final disposition is effected in this matter. The Order of Assignment to Non-Resident Judicial Service of the Honorable Gordon Melson to hear this matter shall continue in full force and effect until the hour of 9:00 a.m., on Tuesday, August 25, 1987, at which time it will be superseded by this Order of Assignment.

Dated August 20, 1987

(John B. Doolin)
Chief Justice

Exhibit 2

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Filed in the District Court, Pottawatomie County, State of Oklahoma: August 24, 1987.

ASSIGNMENT ORDER

Acting in the exercise of powers vested in me by Article VII, Okl. Cons., I hereby assign Joe Welsch, a court reporter regularly serving the 23rd Judicial District, to the District Court, Pottawatomie County, to report in case number C-87-607, styled, Grand Jury Petition.

This assignment shall extend from Monday, August 24, 1987 through Friday, September 4, 1987.

Dated August 20, 1987

(John B. Doolin)
Chief Justice

Exhibit 3

GRAND JURY PETITION

The undersigned qualified electors of Pottawatomie County, State of Oklahoma, respectfully ask that a Grand Jury be convened for the purpose of investigating the office of the District Attorney, the respective District Judges, The Shawnee, Oklahoma School Board and any other misconduct by any public official within said county and state.

It is further suggested that the assigned presiding Judge appoint a special prosecutor. IRVIN OWEN and/or TRUMAN SIMPSON are respectfully suggested for that position.

(Signer's names deleted.)

Exhibit 4

IN THE DISTRICT COURT OF THE TWENTY-THIRD JUDICIAL DISTRICT,
SITTING WITHIN AND FOR POTTAWATOMIE COUNTY,
STATE OF OKLAHOMA

Filed in the District Court, Pottawatomie County, State of Oklahoma: September 23, 1987.
IN RE: THE GRAND JURY

NUMBER: C-87-607

TO: THE DISTRICT JUDGE

REPORT OF THE GRAND JURY

We, the Grand Jury duly empaneled on the 24th day of August, 1987, and charged with the responsibility of investigating all public offenses against the State committed or triable within Pottawatomie County and further duly charged with investigating the conduct of public officers within said County, do hereby submit this our Further Report.

(immaterial matter deleted.)

Having reported, as set forth above, to Your Honor, we feel that we have no further work to do at this time. However, we have been informed by Mr. Owen that he may have further matters to present at some time in the future, and it has been reported in the press that he intends to circulate a Petition for another Grand Jury. With this in mind, we ask Your Honor not to adjourn us ***sine die*** at this time, but to allow us to recess until such time in the future when Your Honor may determine that a Grand Jury is further needed in Pottawatomie County.

(Franklin Gray)
FOREMAN OF THE GRAND JURY

(For privacy reasons, the names of the other Grand Jurors are not furnished.)

Exhibit 5

IN THE DISTRICT COURT
OF THE TWENTY-THIRD JUDICIAL DISTRICT SITTING
WITHIN AND FOR POTTAWATOMIE COUNTY
STATE OF OKLAHOMA

Filed in District Court July 28, 1987.
IN RE: GRAND JURY IN POTTAWATOMIE COUNTY, STATE OF OKLAHOMA
Case No. C-87-607

ORDER OF THE COURT
NOTICE TO THE ATTORNEY GENERAL OF THE STATE OF OKLAHOMA OF DISQUALIFICATION OF DISTRICT ATTORNEY 23RD DISTRICT

NOW, on this 27th day of July, 1987, the Court entered its Order Determining Validity of Petition,setting Date for Convening Grand Jury, Directing the Drawing and Summoning of Grand Jury Panel, and Specifying Manner of Service on Grand Jurors. The Grand Jury Petition filed herein specifically requests an investigation of the office of the District Attorney, 23rd district. Therefore, the Court finds that until such time as the Grand Jury investigates and clears the Office of the District Attorney, 23rd District, of any irregularities or violations of law that the Office of the Attorney General, State of Oklahoma, should be notified and directed to appear and assist the Grand Jury in accordance with the provisions of 22 O.S. §340.

IT IS THEREFORE ORDERED that the Court Clerk of Pottawatomie County shall certify and mail to the Honorable Robert H. Henry, Attorney General, State of Oklahoma, copies of all pleadings and Orders entered in the above styled case.

IT IS FURTHER ORDERED that the Attorney General, or his designated Assistant Attorney General, appear and advise the Grand Jury during its investigation and deliberation as it may require.

SO ORDERED this 27th day of July, 1987.

(Gordon R. Melson)
GORDON R. MELSON
ASSIGNED DISTRICT JUDGE

Exhibit 6

SUBPOENA

IN THE GRAND JURY OF POTTAWATOMIE COUNTY,
STATE OF OKLAHOMA

Filed in the District Court: September 11, 1987.
THE STATE OF OKLAHOMA, PLAINTIFF

vs.

GRAND JURY INVESTIGATION No. C-87-607

THE STATE OF OKLAHOMA TO: Claude Bigbee, 829 N. Broadway, Tecumseh, OK

GREETING. You are hereby commanded to be and appear before the [GRAND JURY] sitting in the City of Shawnee on the 11th day of September, 1987, at 10:00 o'clock A.M. to testify on behalf of the STATE in the above entitled cause, and you will remain in attendance until discharge.

BILL ROBERSON, District Attorney in and for said County
Dated this 11th day of September, 1987 By (Bill Roberson)

Please report to District Attorney's one-half hour before you are to appear in Court
Please call 275-6800 before you come.

Exhibit 7

SUBPOENA

IN THE DISTRICT COURT OF POTTAWATOMIE COUNTY, STATE OF OKLAHOMA

Filed in the District Court: September 21, 1987.
The State of Oklahoma, Plaintiff
vs.
IN RE: THE GRAND JURY No. C-87-607

THE STATE OF OKLAHOMA TO: JIM HILL, 1629 1/2 NORTH KICKAPOO, SHAWNEE, OK

GREETING. You are hereby commanded to be and appear before the DISTRICT COURT sitting in the City of Shawnee on the 18th day of SEPTEMBER, 1987, at 10:00 o'clock A.M. to testify on behalf of the STATE in the above entitled cause, and you will remain in attendance until discharge.

BILL ROBERSON, District Attorney in and for said County
Dated this 17th day of SEPTEMBER, 1987
By (Wm. D. Simpson), Assistant

Please report to District Attorney's one-half hour before you are to appear in Court
Please call 275-6800 before you come.

Exhibit 8

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ASSIGNMENT ORDER C-87-607

Filed in District Court, Sept 17, 1987, Pottawatomie County, Okla.

Acting in the exercise of powers vested in me by Article VII, Okl. Cons., I hereby assign Lori Sokolosky, a court reporter regularly serving the 20th Judicial District, to the District Court,

Pottawatomie County, to report in cause number C-87-607, styled, Grand Jury Petition.

This assignment shall extend from Thursday, September 17, 1987 through Friday, September 18, 1987.

Dated Sept. 14, 1987.

(Rudolph Hargrave)
Vice-Chief Justice

JAS/091187A02

Exhibit 9

IN THE SUPREME COURT FOR THE STATE OF OKLAHOMA

Filed in the Supreme Court December 15, 1989.

THE STATE OF OKLAHOMA, ex rel, IRVIN OWEN, OBA 6825, Appellant	)	
vs.	)	74,566
The Honorable MILTON CRAIG, Nominal Appellee, and the Honorable GLENN DALE CARTER, respectively the Chief Judge and the District Judge for the 23d Judicial District for the County of Pottawatomie, and the State of Oklahoma. Appellees.	)	

APPLICATION AND PETITION FOR WRIT OF MANDAMUS

Comes now the above named appellant, and respectfully asks the court to assume jurisdiction in an original proceeding under this application and petition for writ of mandamus, for the following reasons:

1. The relief sought is against the above named District Judges since relief below has been denied, and appellant has exhausted all efforts in the District Court of Pottawatomie County,

Oklahoma. Therefore, this court is asked to assume control of the matter as provided by law. It is alleged that gross abuse of discretion occurred below which has denied appellant due process, all as outlined hereafter.

2. Mandamus is the appropriate relief because appellant, as attorney for the estate of Jim Thorpe (which has pended for more than 16 years) was arbitrarily, and without due process, removed as estate attorney. It is urged that removal was a ploy used in a hearing to disqualify Judge Glenn Dale Carter, and appeal to the Chief Judge under Court Rule 15, was also denied on the basis that appellant had no standing due to the earlier removal ruling.

3. This court is requested to assign an independent Trial judge or referee to examine the background and facts because the deceased is an internationally known athlete, and along with Will Rogers, is a renowned native Oklahoma hero.

In the alternative, it is requested that the court make any other ruling appropriate under the circumstances.

. . . (irrelevant matter re Jim Thorpe Estate deleted). . .

4. Appellant then filed a motion to disqualify the trial Judge, Glenn Dale Carter for the following reasons.

(a) That he had pre-judged the case, without due process, and has refused throughout to hear any legal reason why discharge was inappropriate.

(b) That long standing differences existed by reason of Judge Carter's rulings, considered harsh, in taking babies from mothers without due process.

(c) Asserting under oath, that Judge Glenn Dale Carter had committed a felony during withdrawal interval, after appellant had filed against him.

(d) That in 1987, appellant drafted and supervised the collection of 1000 signatures for a Grand Jury to investigate Judge Carter. That the District Attorney refused to subpoena the 12 female witnesses submitted to him by appellant and prematurely discharged the Grand Jury.

(e) That Judge Carter is aware that appellant has made formal sworn complaint against him before the Council for Judicial complaints, and by his attitude toward appellant leaves the impression that the cumulative impact of the foregoing complaints prevented his recent request for appointment to the Court of Criminal Appeals.

. . .(irrelevant matter deleted) . . .

(Irvin Owen)
Irvin Owen oba 6825

State of Oklahoma)
) ss.
Pottawatomie County)

I certify that on the 13th day of December, 1989, attorney Irvin Owen appeared before and averred that the matters and things forth in the foregoing pleading are all true, based on information and belief, as he verily believes.

(Glenna Finley)
Notary Public

My commission expires
(9-23-93)
Irvin Owen, Attorney
Phone (405) 275-1788
316 N. Broadway St.
Shawnee, Oklahoma 74801

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

Filed in the Supreme Court June 19,1991
ROBERTA ANN FUNNELL,)
Appellant,)
vs.) No. 72,451
ROBERT MARTIN,)
Appellee.)

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF OKLAHOMA, DIVISION NO. 1

Appellant, Roberta Ann Funnell (hereinafter "Ann"), prays that a Writ of Certiorari issue to review a Memorandum Opinion of the Court of Appeals of the State of Oklahoma, Division No. 1, not published. A copy of the opinion is attached as Appendix "A".

I.

The Court of Appeals Memorandum Opinion was issued March 26, 1991. It affirmed the district court's judgment entered on

December 19, 1988. The Order denying rehearing was filed on May 30, 1991.

II.

The Oklahoma Supreme Court should grant certiorari because the Oklahoma Court of Appeals has:

(A) Decided a question of substance not heretofore determined by this Court nor any Federal Court as to any judicial immunity of a state court administrator, which could render an award of attorney fees to the defendant/appellee based on the claim that Ann's 42 U.S.C. §1983 action was without basis in law or fact, and was frivolous, Ann alleged that she had been denied property rights and access to the courts because ***inter alia*** Appellee (hereinafter "Martin"), court administrator for the 7th Judicial District, made a practice of removing Ann's court files from the Clerk's office to Martin's office. Important pleadings and portions of the file were kept from Ann and the court while motions for summary judgment were pending as a portion of the file "disappeared" for many months. Martin admitted removing the file to his closet. His claim he had not removed a later case file was refuted by copies of his signature on the Clerk's check out card, which were a part of Ann's Statement to Controvert Defendant Robert Martin's Statement of Material Facts Not In Issue (R.469-488) filed July 5, 1988. The trial court assigned to hear the §1983 action stated on August 4, 1988, that he hadn't seen that file since an April 19th, 1988, hearing which he had held without notice to Ann, despite being advised she was being treated for severe accident injuries and been advised by a physician that she should not appear in court. The Journal Entry for the April hearing was not entered until January 26, 1989. Ann appeared on August 4, 1988 to pursue a motion to disqualify the judge and for a change of venue. Martin's responses to Ann's interrogatories had not been served on her nor entered on the court docket but had been file stamped and place in the back of the file. Ann believed Martin, who had access to the file, or his friends had tampered with the file which needed to be removed from Oklahoma County to assure document safety. The trial court denied Ann's Motion but pursued dispositive motions of other defendants and Martin - although Ann had had to leave the room due to illness and despite Rule 15 of Rules for the District Courts which requires a rehearing of a motion for judicial disqualification before another judge before any filing to the Oklahoma Supreme Court. Ann had also advised the court that under a prior ruling adopted by this

Court she could not participate in any hearing without waiving the judicial disqualification, ***Andrews, Mosburg, Davis, Elam, Legg & Bixler, Inc.*** v. ***General Insurance Company of America***, U.S.W.D.Okl. 148 F. Supp.304(1976). A request to rehear the disqualification was timely filed August 11, 1988. The Journal Entry of the August hearing granting the dispositive motions without findings of fact or law was not entered until October 14, 1988. Thirty four days later, on November 17, 1988, Martin filed for attorney fees to which Ann objected, particularly as to time claimed for filing frivolous motions and objections,and for research. The Attorney General, whose staff chose to represent Martin without proper fact finding as Martin was sued as an individual, had commissioned David Lee to author and update a study of defense of §1983 cases. It was asserted that Martin's counsel had deliberately run up costs of defense and repeatedly filed misrepresentations of law or fact. (That conduct carried over to their brief confusing the Appeals Court on 7th district judges' disqualification.)

Meanwhile a court room observer at the October hearing made an affidavit of the prejudiced conduct of the judge, who ***inter alia*** had winked at a defendant/lawyer, while requiring Ann to present her request to rehear the disqualification to him, contrary to Rule 15. Ann filed another disqualification motion under Rule 15 and served it in person on December 9, 1988, ten days prior to the scheduled hearing, as required. At the hearing on December 19, 1988, the judge first claimed he had not seen the motion. When a copy with the Judge's secretary's signature was presented, Martin's counsel claimed they had not had response time, and the judge ruled the motion was not ripe to he heard. After vigorous objection by Ann, Martin's counsel and the judge made a deal that Martin would allow the hearing of Ann's motion if the judge would hear his motion for attorney fees. Ann objected vigorously as to the denial of the right to have a rehearing under Rule 15 and again advised the Court she could not participate in the merits under this court's adoption of ***Andrews*** and that the only case she found that referred to a court administrator was ***Crews*** v. ***Petroskey***, 509 F.Supp. 1199 (1981) which states in passing that is evident that the duties of a court administrator are essentially administrative and the administrator is an employee of the court on duties involved in the day-to-day business of running the courts. Martin claimed "absolute immunity", although no evidence or law was presented. Ann asserted that her constitutional rights to due process were being denied. The trial

court made no findings of fact or law but ruled the action was "frivolous and without merit." Martin's counsel inserted his own arguments as being the court's findings into Order and Journal Entry of Judgment filed January 26, 1989. Ann refused to sign it.

(B) The Appeals Court invidiously ignored federal law and decisions, contrarily hold "§1983 clearly provides for attorney fees to the prevailing party at the discretion of the court" then cited state law as to the standard for abuse of discretion. **§1983 makes no mention of attorney fees.** Ann's proposition was that "The awarding of attorney fees against plaintiff in a 42 U.S.C. §1983 case is contrary to fact, the law and the clear intent of Congress as to plaintiffs asserting their rights." The legislative history of the Awards Act of 1976 expanded ***§1988*** to allow attorney's fees only at the discretion of the judge "guided of course by the case law interpreting similar attorney's fee provisions." ***United States Steel Corp.*** v. ***United States,*** 519 F2d 359, 364 (3rd Cir.1975) was cited in reports of both the Senate and House of Representatives, Nos. 94-1011 and 94-1558 respectively, as the standard for awards to defendants in order to avoid a potential "chilling effect". Congress made clear as did their cited case that a dual standard existed to award fees. As to "prevailing " defendants, the plaintiff's action must have been vexatious and frivolous or instituted solely to "harass or embarrass" the defendant. In 1978 the United States Supreme Court in denying fees to the prevailing defendant in a Title VII case ***Christianburg Garment Co.*** v. ***EEOC,*** 434 U.S. 412, 54 L.Ed 2d 648, held that plaintiff's action must be without foundation, frivolous or unreasonable. The Honorable Fred Daughtery, Chief Judge in 1980 for the United States District Court, Western District of Oklahoma, citing ***Christianburg*** in denying prevailing defendants attorney fees, expressed concern for the "chilling effect" on civil rights plaintiffs, ***Barriner*** v. ***Stedman,*** 504 F. Supp. 52, ***E.E.O.C.*** v. ***Chandelle Club***, 506 F. Supp. 75. **Congress intended §1988 to aid plaintiffs.**

Further discussing ***Christianburg,*** the federal courts have developed the following relevant factors: whether the issue is one of first impression requiring judicial resolution; whether the controversy is sufficiently based upon a real threat of injury to the plaintiff; whether the trial court has made a finding that the suit was frivolous under the ***Christianburg*** guidelines; and whether the record would support such a finding. In making its attorney fees decision, a trial court must discuss the specific information that forms the basis of the plaintiff's suit and must explain why this information does not

constitute adequate factual substance for the commencement of a non-frivolous civil rights case in order to provide a basis for appellate review, ***Munson*** v. ***Friske,*** 754 F. 2d 683 (1985), which is widely cited.

The court must "provide a concise but clear explanation of its reasons for the fee award" and hours that are "excessive, redundant, or otherwise unnecessary" should not be compensated, ***Hensley*** v. ***Eckerhart,*** 461 U.S. 424, 434, and 437.

One claiming immunity has the burden of demonstrating entitlement to it, ***Butz*** v. ***Economou,*** 438 U.S. 478 at 506, and those entitled to absolute immunity have it "because of the special nature of their responsibilities" rather than "because of their particular location within Government", ***Butz*** at 511. Quasi-judicial immunity derives from judicial immunity. One carrying out an order must have an order for which the issuing judge is immune from liability, ***Turney*** v. ***O'Toole*** 898 F, 2d 1470 (10th Cir. 1990). The 7th Judicial District judges were disqualified in all of Ann's cases at the time and Martin knew or should have known no orders from them to remove files were with jurisdiction. The trial court had an affidavit that Ann was seeking an affidavit from the assigned judge who was ill, but had telephoned Ann to advise he had never requested the removal of the files to Martin's office. But the trial court ruled on summary judgment motions although admitting he had not looked at the file, contrary to this courts decisions on such. Ann was unfairly prejudiced by the trial court's actions and rulings, belatedly memorialized. Surprise is abhorred in ***White*** v. ***New Hampshire Empl. Sec.,*** 455 U.S. 445, 71 L.Ed 2d 325, 102 S. Ct. 1162. The United States Supreme Court held that local court rules best determine the time for filing attorney fees intending that such a practice permit awards to be considered with any appeal from the final judgment and an untimely request would be grounds for denial. Martin was on notice that the applicable federal rule required filing an application within 15 days of the entry of judgment, Rule 6(E), as set forth in the Oklahoma Bar Journal Vol 56-No.30, P. 1746. Clearly Martin's attorney fee request was untimely. Judgment was entered on August 4, 1988, Journal Entry filed on October 14, 1988, and fee application made 34 days later, November 17, 1988. The Oklahoma Legislature also recognizes the need for timely filing of attorney fee requests by requiring them to be filed within 30 days after filing a judgment, 12 O.S.§1003. A clear abuse of discretion exists. This Court recognized federal law supremacy in §1983 actions in state courts in ***Mclin***

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v. ***Trimble,*** 795 P.2d 1035 (1990), after the filing of briefs herein. Ann respectfully urges that this Court on granting certiorari for good cause allow additional briefs to present cases such as ***Turney, supra*** and ***Mclin, under Rule 3.15.*** The standard is review ***de nova, Supre*** v. ***Ricketts,*** 759 F.2d 958 (10th Cir. 1986) cited by the Unites States Supreme Court, ***Western Nuclear, Inc.*** v. ***Huffman,*** 72 L.Ed 2d 66 (1987) as this is a statutory interpretation question and legal analysis for the award not heretofore addressed.

(C) The Appeals Court decided Ann's constitutional proposition that the state judicial process and rules of procedure do not provide fair procedures in matters of judicial disqualification and are unconstitutional denying access to the courts, by citing decisions of this court that are a disparity of law. That court also decide ***de facto*** a constitutional question as to due process of law in the disqualification of judges citing said decisions in disparity. The opinion holds that ". . .[I]nasmuch as Oklahoma statues governing disqualification of judges have been approved as not violative of Art. II, §6 of the Oklahoma constitution prohibiting denial of access to the Courts, we find Rule 15 to be a valid exercise of our Supreme Court's rule making powers to implement the disqualification provisions of Title 20. [20 O.S. 1981 §§1401 et seq]". Rule 15 directly conflicts with 20 O.S. § 1403. Rule 15a. states a motion to disqualify may be filed and copy delivered to the judge not less than ten (10) days before trial. 15b. requires a re-hearing of such motion before this Court will entertain an original proceeding. Five (5) days is the time required to file a request for re-hearing and proceeding to this Court if the re-hearing is denied. No mention is made of notice to the other side or their response time, if any, §1403 states the motion is filed and after reasonable notice to the other side, same to be presented to such judge, and upon his failure to certify disqualification within three (3) days before the cause is set for trial, application may be made for mandamus. Thus some protection was afforded, albeit rushed, to file to this Court so that such a judge cannot proceed to make orders as it is an exercise of unwarranted judicial authority, ***State ex rel. Garrett*** v. ***Freeman,*** 229 Pac. 296 ***State ex rel. Larecy*** v. ***Sullivan,*** 248 P.2d 239 (1952). No such protection exists under Rule 15 resulting in both a denial of access to the courts and due process. This Court adopted the rule in ***Andrews, supra*** which waives disqualification by participation in a hearing on the merits. Thus clearly by the facts, ***supra,*** Ann was denied due process and access to the courts, particularly where Martin's counsel and the judge

made a deal to proceed on hearing the application for attorney fees after holding the disqualification motion was not ripe for hearing because Martin had not had the time allowed under Rule 4.

As to the disparity of law in the opinion, it cites ***ex parte Hudson,*** 106 P. 540, which is cited in ***Mayes*** v. ***Pritchford,*** 109 P. 821 and ***Turner*** v. ***McCain,*** 109 P. 821, all decided 1910. ***Hudson*** at 541 cites ***Lincoln*** v. ***Territory,*** 58 Pac. 730, 8 Okl. 546, holding that a judge proceeding after the filing of an affidavit of disqualification would do so without power or authority and the trial a nullity. ***Hudson*** holds that constitutional disqualifications cannot be excluded and that the machinery is a proper subject of legislation, and that a judge would have no right to decide his bias or prejudice, at 543. Thus the opinion's cited ***Osage Implement Co.*** v. ***Bottrell,*** 363 P.2d 940 files in the face of ***Hudson,*** which has never been overruled and still cited in published opinions. ***Osage,*** citing ***Parnacher*** v. ***Mount,*** 248 P2d 1021, contrarily holds that bias and prejudice is addressed to the "sound discretion" of the judge. This also is contrary to the rule in ***Garnett*** v. ***State,*** 176 Pac. 769, holding that a judge is not to determine the truth of the averments in an affidavit and he loses jurisdiction. Clearly the disparity of Rule 15, 20 O.S. §1403 and this Court's decisions in disparity demands the exercise of this Court's power of supervision. Further reason exists as the record shows that although Ann timely filed a request to rehear the motion for disqualification the language was misconstrued by Martin's counsel to mean rehearing before the trial court and a frivolous objection was filed falsely claiming Ann's request was untimely. The Honorable Judge Saied retired as Presiding administrative judge and Judge Arthur Rakestraw was elected, but this fact although known doubtless to Martin was not revealed to Ann or the Clerk. Judge Saied had ordered that all 7th Judicial judges were disqualified before Martin colluding with other defendants sought to have then-Presiding Judge Joe Cannon appoint a 7th district judge, contrary to law and Rule 9, Administration of Courts, resulting in filings listed in one and a half single spaced pages of Martin's brief herein, but totally disregarding Judge Saied's earlier order. This was a gross abuse. As Ann's request for rehearing her disqualification motion was apparently acted upon by Judge Rakestraw as a denial because she sent a notice that all pending matters were set for hearing before the trial court. Ann filed to the Court for Writs of Prohibition/Mandamus against Judge Carter, the trial judge, and Judge Rakestraw, No. 71,726. This Court took jurisdiction to deny the

disqualification of then-Chief Justice Doolin but denied relief on the similar issues herein. The matter was unfairly rushed as Ann was not served with Martin's and others' briefs until Saturday before the oral hearing on Monday morning. The confusion created by and prejudiced conduct of the referee is set forth in an affidavit attached to the Petition for Rehearing. Martin's misconstruction of the Rule 15 language was adopted by Judge Carter, the trial court, page 3, ***supra,*** when the wink was directed toward the defendant/lawyer with whom he had old employment ties in the office of the district attorney. After the filing of another action against Carter, No. 74,566, Ann learned he was being investigated by a grand jury at the time then-Chief Justice Doolin had assigned him. Said jury was prematurely dismissed by a friendly D.A. who had refused to subpoena 12 female witnesses. It was then learned that the attorney representing the winkee was Carter's boyhood friend. Proceeding when prejudiced in favor or against a party is prohibited. ***Fink*** v. ***Venable,*** 68 P. 2d 425. Abuse of discretion is underscored.

(D) The opinion ambiguously held Ann to the standard of an attorney although Oklahoma Courts fail to hold attorneys to such standards. ***Funnell*** v. ***Jones,*** 737 P.2d is contrary to controlling federal law in ***Haines*** v. ***Kerner,*** 404 U.S. 519, ***Estelle*** v. ***Gamble, 429 U.S. 97, Hughs*** v. ***Rowe,*** 449 U.S. 5. In ***Meade*** v. ***Grubbs,*** 841 F.2d 1512 C.A. 10 (Okl.) 1988, the Honorable William Holloway, Chief Judge, held that pro se litigants are held to less stringent standards, apparently disregarding ***Funnell,*** which unfairly holds Ann, a female litigant, to standards this Court did not apply in prior pro se cases by males, ***Shaffer*** v. ***Jones,*** 650 918, ***Rourke*** v. ***Myers,*** 84 P.2d 639, ***Jefferson*** v. ***British American Oil,***145 P2d 387. It can be concluded this Court favors males.

CONCLUSION

The Court below and the Court of Appeals have so far departed from the accepted and usual course of judicial proceedings as to call for this Court's supervision. This Court should grant a Writ of Certiorari to protect the substantive constitutional rights of the Ann and others.

(Roberta Ann Funnell)
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CERTIFICATE OF SERVICE ATTACHED

IN THE COURT OF APPEALS OF THE STATE OF OKLAHOMA

DIVISION 1

Filed in the Court of Appeals, May 6, 1991.

ROBERTA ANN FUNNELL,	)	
Appellant,	)	
vs.	)	No. 72,451
ROBERT MARTIN,	)	
Appellee.	)	

PETITION FOR REHEARING OF APPELLANT AND BRIEF IN SUPPORT

Appellant, Roberta Ann Funnell, petitions this Court to rehear this matter and withdraw the Memorandum Opinion filed herein on March 26, 1991, pursuant to Rule 3.9 of the Rules of Practice and Procedure in the Court of Appeals and On Certiorari To That Court, 12 OS Ch. 25, App. 3. Appellant respectfully submits that the Court of Appeals has overlooked or misapprehended certain points of law and fact in affirming the decision of the district court which has so far departed from the accepted and proper course of judicial conduct and proceedings as to **deny access** to the court and due process contrary to state and federal Constitutions. A recent Supreme Court ruling demands reversal of Opinion.

PRELIMINARY STATEMENT

This Court misapprehended the fact that all of the judges in Oklahoma County **were disqualified from the *outset* as readily acknowledged by the Honorable William Saied who rendered that the**

***entire* 7th Judicial District was disqualified (R85). The appellee is their employee, who *thereafter* colluded to have a "friendly judge" and create legal expenses.** This Court overlooked the facts that appellant had filed a request for Judge Glenn Dale Carter to certify his disqualification based *inter alia* on his having held an ***ex parte* hearing without notice to Appellant at which the merits must have been discussed as the Journal Entry set time limits for filing "dispositive motions" and responses sans regard for discovery needs**, all slanted favorably to the defendants. The judge acted despite knowing Appellant was injured and **not present to assert her due process rights and be able to present reasons for due discovery.** She was severely injured shortly after the judicial appointment matter was presented to the Chief Justice and **Judge Carter's appointment was concealed from her.** After the filing of Supreme Court No. 74,566 in late 1989, she finally learned that **at the time of his appointment he was being investigated by a Grand Jury which was prematurely discharged by a friendly District Attorney who refused to subpoena 12 female witnesses.** Judge Carter was formerly with the D.A.'s office and had worked with the attorney/party toward whom he winked when he required Appellant to present her disqualification rehearing request before him. The party was accused of altering a court document in a file checked out to his office (R742-761) and his counsel had been Carter's boyhood friend. **The conduct by Judge Carter is explicitly contrary to the Judicial Conduct Code of the American Bar Association**, discussed *infra*.

This Court overlooked Appellant's request for extension of time for discovery to obtain an affidavit from Judge Merle Lansden due to his illness, although he had phoned to advise that he had not asked for the files to be kept any place but the Clerk's office, was abusively attacked by Appellee, R434-443, R469-488. On August 4, 1988, Judge Carter denied the disqualification request and proceeded despite Rule 15 requirement that the Appellant's request be heard by another judge. He asked for defendant's arguments. Despite admitting he had not looked at the file he proceeded to rule on motions for summary judgment **and despite the fact Appellant eventually had to leave the courtroom due to illness (R552 ¶20). Due to adoption by Oklahoma of a 10th Circuit Rule, Appellant could not participate in the proceedings without waiving the disqualification, *DENYING DUE PROCESS AND COURT ACCESS.***

This Court overlooked that Appellee had falsely answered and concealed his Answers to Interrogatories ***which were knowingly not served on Appellant*** and his statement of material facts were controverted demonstrating that he had answered falsely (R469-488), R252-266).

This Court overlooked that **Appellant had complied** with Rule 15, Rules of the District Courts, 12 O.S.1981, Ch. 2, App. by filing a request for disqualification rehearing to the Presiding Judge of the 7th Judicial District, copy to the already disqualified Chief Judge. Two of the assistant attorneys general misrepresented law and falsely claimed the request was untimely. The new Presiding Judge, Arthur Rakestraw, apparently confused by the Rule and/or law set a hearing before Judge Carter. ***Appellant's request for rehearing was not heard before another district judge as required under Rule 15.*** R564-567, R571-571, R577-580, R609-619, R621-631, ***THUS DUE PROCESS AND COURT ACCESS WERE DENIED TO HER.***

This Court overlooked that Judge Carter failed to memorialize his rulings on August 4, 1988, contrary to law and failed to indicate his 'findings" until nearly five months later so Appellant had no notice of any ruling requiring appeal which appeared futile and contrary to law.

This Court overlooked that after the aforesaid misrepresentations by the Appellee's attorneys and the confusion of Judge Rakestraw Appellant filed in the Supreme Court for Writs of Prohibition/Mandamus to require Judge Carter to certify his disqualification and declare void his acts on August 4, 1988, IN ACCORDANCE WITH EXISTING CASE LAW. The Petition set forth acts of Judges Carter and Rakestraw, and Justice Doolin as "fraudulent, invidiously arbitrary and capricious in total disregard of state and federal constitutions and established law." These charges were supported by numerous documents and were made **only after** the Supreme Court Referee tried to dissuade Appellant from asserting her rights under Rule 15 as set forth in the attached affidavit which sets out acts demonstrating bias and prejudice against her as a female pro se litigant by the Oklahoma courts. It is made at this time in response to this Court's ambiguous holding that she is held to the standards of an attorney **although the Oklahoma courts fail to hold attorneys to the "the standard of an attorney"** thus demonstrating the Courts' bias in favor of attorneys over pro se litigants. The ***Funnell*** v. ***Jones*** rule ignores federal law and not

prior held against male civil pro se litigants. This Court favored Appellee's Counsel.

This Court misapprehended Appellant's Proposition One that Rule 15 does "not provide fair procedures in matters of judicial disqualification and are unconstitutional denying access to the courts." This Court overlooked the numerous facts in the record regarding Appellant's ***second*** request for Judge Carter to certify his disqualification, after winking at his former co-worker attorney, which was supported by affidavits of observers in the courtroom. Particularly overlooked was the blatant false claim by Judge Carter that he had not been served a copy of the second motion for disqualification, R763-768, R772 and 776, pages 3-9 of the Transcript filed February 28, 1989, which was added to the record after Appellant filed her Brief. The transcript was among documents "missing" from the Court file to which Appellee had free access. Also overlooked was the deal making by Judge Carter and counsel for Appellee, pages 10-11 of said Transcript and the confusing argument that the request for rehearing of the first request for certification of disqualification had to have presented to the Administrative Judge before hearing the second, when this had already been done as set forth in the second full paragraph, page three (3) herein, as well as presented to the Supreme Court. That Court had accepted jurisdiction **but totally failed to clarify its own Rule so that Judge Carter thereafter required presentment to him of the request for rehearing under Rule 15** ***CONTRARY TO DUE PROCESS AND COURT ACCESS REQUIRED BY STATE AND FEDERAL CONSTITUTIONS AND PRIOR OPINIONS OF THE OKLAHOMA SUPREME COURT CITED BY THIS COURT.*** To reiterate - after further misconduct by Judge Carter, the winking while requiring the presentment of the request for a rehearing and profuse exchanges of gratitude between **him** and Appellee's counsel, a second request under Rule 15 was instigated. That request was denied while making a deal with Appellee's counsel to "allow" hearing the disqualification if the Appellee's motion for attorney fees could be heard. Again Appellant objected on the basis she could not participate in the proceedings without waiving the disqualification. Appellee's argument was frivolous as he claimed the disqualification was "not ripe" as he had not had the full 15 plus 3 days notice, T. pp 4-11, which is not the time required under Rule 15. Judge Carter also allowed his boyhood friend to present argument

although he was there only as an observer and had no motions pending., T p.27, L25-P28, L1.

This Court overlooked the fact that the Supreme Court did not address the second request for disqualification. This Court egregiously misapprehended the Constitution, its own law citations, and the facts in its holding that:

> ". . .inasmuch as Oklahoma statutes governing the disqualification of judges have been approved as not violative of Art. II §6 of the Oklahoma Constitution prohibiting denial of access to the courts, we find Rule 15 to be a valid exercise of the Supreme Court's rule making powers to implement the disqualification provisions of Title 20, See, 20 O.S. 1981 §§1401 et seq.; ***Mayes*** v. ***Pitchford***, 20 Okla. 129, 109 P.821 (1910) (Predecessor statute to 20 O.S., §140 at seq. not violative of Art 11, §6 of Oklahoma Constitution); accord, ***Turner*** v. ***McCain***, 26 Okl. 132, 109 P.821 (1910); ***Ex parte Hudson***, 3 Okla. Cr. 393, 106 P.540 (1910), rehe.den. 3 Okl.Cr.393, 107 P. 735."

This holding constitutes denial of access to the courts to Appellant.

This Court overlooked and misapprehended that the law in its cited ***Osage Implement Co.*** v. ***Bottrell***, 363 P. 2d 940 (Okl. 1961) ***is directly contrary to its supra citations, Ex parte Hudson,*** etc.

This Court overlooked all of the federal law and intent of Congress as to how 42 U.S.C. §1983 cases may have an award of attorney fees to the defendant. The Opinion ***mistakenly*** states that:

"However, §1983 clearly provides for attorney fees to the prevailing party at the discretion of the court."

§1983 MAKES NO SUCH PROVISION.

This Court overlooked that the standards in 42 U.S.C. §1983 cases require that federal law is paramount to any state law which conflicts with federal law in a §1983 action. This is known as the Supremacy Clause which the Oklahoma Supreme Court recently recognized in ***Mclin*** v. ***Trimble*** , 795 P. 2d 1035 (Okl. 1990), acknowledging the duty to recognize the "substantial rights" arising out of a federal cause of action when such is brought in the state courts.

McLin was decided after this case was briefed and as it holds that state sovereign immunity is not applicable to a §1983 action

in state court, appellant's case could not be construed to be "frivolous," particularly where it is a case of first impression.

The 10th Circuit made decisions after this case was briefed and which apply here. ***Turney*** v. ***O'toole***, 898 F2d 1470 (1990) and ***Martin*** v. ***Bd. of County Comm'rs. of Pueblo County, 909 F2d 405 (1990)***. **This Court's Opinion must be withdrawn and reversed. Appellee's admitted acts of removing Appellant's court files and putting them in his closet shelf were contrary to law and/or reasonable conduct,** as well as his misrepresentations that he had not removed Appellant's court files thereafter. **The pattern of tampering with court files continues as set forth in Appellant's brief. This Opinion only serves to allow these unlawful acts to continue, along with the abuses by counsel.**

ARGUMENTS AND AUTHORITIES

The argument and authorities presented and cited ***supra*** are adopted by reference and were stated to clarify the general basis for petition.

In ***Mclin*** v. ***Trimble***, 795 P2d 1035 (Okl. 1990) the Oklahoma Supreme Court stated at 1037:

> "However, the assertion of an immunity is not a state-law created defense to a federal cause of action. The issue of the application of an immunity is one of federal law. ***Martinez*** v. ***California***, 444 U.S. 277, 284 n.8, 100 St. Ct. 533, 558 n.8. 62 L.Ed 2d 481 (1980) (**state sovereign immunity not applicable to §1983 action in state court**)(emphasis added). . . The Court emphasized this point in ***Felder*** v. ***Casey***, 487 U.S. 131, 108 S. Ct. 2302, 101 L. Ed 2d 123 (1988) where it explained that state immunity law was "preempted" in §1983 actions brought in state court because state immunity law would thwart the Congressional remedy and that immunities were provided by its prior decisions. ***Id.*** 108 S. Ct. at 2307."

THUS APPELLEE'S ASSERTION OF SOVEREIGN IMMUNITY IS INVALID. NOR DOES HE HAVE QUALIFIED IMMUNITY UNDER *MCLIN*. At 1036 the Court stated:

> "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."

citing ***Mitchell*** v. ***Forsyth***, 472 U.S. 511, 517, 105 S. Ct. 2727[2738], 73 L. Ed2d 396 (1982).

At 1041 N. 5, the Court stated that a discretionary function includes initial policy level or planning decisions and not operational level decisions made in the performance of policy. Citing *Nguyen* v. *State of Oklahoma*, 788 P. 2d 962 (Okl. 1990).

NOR DOES APPELLEE HAVE JUDICIAL IMMUNITY AS AN ADMINISTRATOR WITH CLEAR STATUTORY ADMINISTRATIVE DUTIES ONLY. 20 O.S. §126 STATES:

". . .The duties of the trial court administrator shall be to assist the presiding judge of the judicial administrative district in the performance of his administrative duties."

EVEN IF HE WERE GIVEN DIRECTIONS OR ORDERS FROM A JUDGE THEY WOULD HAVE TO BE CARRIED OUT UNDER THE RULE ESTABLISHED IN *Mitchell*, supra. Any reasonable person would know that removing and holding files would interfere with a party's rights. Further, any possible quasi-judicial immunity that might derive from judicial immunity requires that the order must one for which the issuing judge is immune from liability, ***Turney*** v. ***O'Toole***, 898 F2d 1470 (10th Cir. 1990) at 1474 holding that a state official is not absolutely immune from damages arising from the execution of an order issued by a judge acting "in the 'clear absence of all jurisdiction' ".... Also, quasi-judicial immunity will not attach to state officials acting "outside the scope of their jurisdiction." The manner of execution of a "court order" bears scrutiny, ***Martin*** v. ***Bd. of County Comm'rs of Pueblo County***, 909 F2d 405 (10th Cir. 1990.) APPELLEE FAILED TO ESTABLISH WHO GAVE ANY ORDERS TO REMOVE THE FILES AND ALL THE OKLAHOMA COUNTY JUDGES WERE DISQUALIFIED TO ACT. ***JUDGE CARTER ABUSIVELY DENIED THE APPELLANT OPPORTUNITY TO OBTAIN AN AFFIDAVIT FROM JUDGE LANSDEN WHO WAS ILL, AFTER THE ATTORNEY GENERAL'S OFFICE DEFENDED ALL DEFENDANTS.***

It can reasonably be argued that under ***McLin, supra*** this state's courts have denied appellant's substantive rights as to the manner in which the disqualification motion was handled and breached their constitutional duty. ***McLin*** quoted ***Felder*** v. Casey. 1108 S. Ct. at 2313:

> "Just as federal courts are constitutionally obligated to apply state law to state claims. . . so too the Supremacy Clause imposes on state courts a constitutional duty 'to proceed in such manner that all substantial rights of the parties under ***controlling*** federal law [are] protected.' ***Garrett*** v. ***Moore-McCormack***, 317 U.S. 239, 245, 63 Ct. 246, 251, 87 L.Ed. 239 (1942). " **(emphasis added).**

In the federal courts when an affidavit of personal bias or prejudice either against a party or in favor of an adverse party is made against a judge that **judge shall proceed no further.** 28 U.S.C. §144. **THAT IS THE SAME POSITION OF THE COURT IN *EX PARTE HUDSON*, 106 p. 540 (1910) *CITED BY THIS COURT IN THIS OPINION*. *Hudson*** was decided prior to ***Mayes*** v. ***Pitchford***, 109 P. 821 (1910) and ***Turner*** v. ***McCain***, 109 P. 821 (1910) both of which cited ***Hudson***, which discusses the language in the state constitution as to justice being administered "without sale, denial, delay, or prejudice." That Court at **541 reiterated *Rea* v. *State***, 105 Pac. 384, stating:

> **"It follows, then, as a matter of course, that the judge who would proceed with the trial after the making and filing of such an affidavit would do so without power or authority, and the trial would be a nullity."**

and at 513 the Court said:

> **"While the Constitution prohibits the trial of a case before a prejudice judge or juror, yet it is silent as to the manner in which the question of prejudice is to be decided. *The machinery by which this should be determined, either as to judge or juror, is a proper subject of legislation.* Manifestly, *A JUDGE WOULD HAVE NO MORE RIGHT TO PASS UPON HIS BIAS AND PREJUDICE THAN A JUROR WOULD HAVE TO DECIDE AS TO HIS DISQUALIFICATION . . .*" (Emphasis added)**

Hudson was never overturned and was cited in ***Johnson*** v. ***Johnson***, Okl. 424 P. 2d 414, which sought to overturn ***Johnson*** v. ***Johnson***, Okl. 279 P2d 928, based on the latter having been decided by justices including Justice Corn. At 416 the Court noted that the petition to vacate the former opinion "is based generally upon the recent disclosures and happenings relating to the dishonesty of

Justice Corn and others." There has been a cloud over certain Supreme Court decisions especially those that conflict or disregard precedent law. This Court cited ***Osage Implement Company*** v. ***Bottrell***, 949 P. 2d 940, which refers to the application for disqualification being addressed to the trial court's "sound discretion" citing ***Parnacher*** v. ***Mount***, 248 P. 2d 1021, ***which was decided during the questionable period. THUS HISTORIANS AND INVESTIGATIVE REPORTERS AS WELL AS APPELLANT HAVE CAUSE TO WONDER ABOUT THIS DRASTIC CHANGE FROM THE CLEAR HUDSON*** position to judges suddenly having "sound discretion" in this matter of their bias and prejudice. **Rule 15 abrogates the substantive law 20 O.S. §1403 which requires disqualification refusals to go directly to the Oklahoma Supreme Court, and is specifically contrary to Hudson** and to ***Jones*** v. ***State***, 499 P. 2d 482.

The record is clear that each time Appellant appeared before Judge Carter she reiterated that under the Oklahoma Supreme Court's adoption of a 10th Circuit rule that participation in proceedings other than disqualification **waived the disqualification** as set out in the facts of her brief in chief. Only the deliberate obtuseness of Appellee could support any claim that Appellant had not supported by facts her position that the state judicial process and rules of procedure do not provide fair procedures in matters of judicial disqualification and are unconstitutional denying access to the courts. **THE PRESENT POLICY OF ALLOWING A JUDGE TO PROCEED AFTER CLEAR DEMONSTRATIONS OF PERSONAL BIAS AND "PUT DOWN" OF APPELLANT SUCH AS WINKING AT A COLLEAGUE WHILE DEMANDING PRESENTATION OF A REQUEST FOR REHEARING OF DISQUALIFICATION THAT BY RULE BELONGED BEFORE ANOTHER JUDGE IS ODIOUS AND DEMANDS REVERSAL OF JUDGE CARTER'S RULING ON ATTORNEY FEES UNDER THE LAW AND STATE AND FEDERAL CONSTITUTIONS. THE OKLAHOMA SUPREME COURT ADMINISTRATIVELY HAS ABROGATED ITS CONSTITUTIONAL DUTY.** 48a C.J.S. §105 states that "Generally, a waiver of the disqualification of a judge results when, after the judge is permanently assigned, the party participates before the judge in any judicial proceeding which concerns the merit of the action." Catch-22 is the appropriate common vernacular for the procedure, which is arbitrary and capricious, imposed on Appellant.

To reiterate this Court misstated the provisions of 42 U.S.C. §1983. It is §1988 that allows attorney fees but is strictly qualified and limited when amended in 1976 and the intent of Congress is stated in the House of Representative Report No. 94-1558 at page 8, their intent that the judicial discretion be **"GUIDED OF COURSE BY THE CASE LAW INTERPRETING SIMILAR ATTORNEY'S FEE PROVISIONS." At pages 6 and 7, Congress set forth its intent as to prevailing parties and called attention to the fact that courts have developed a different standard for defendants to avoid a "chilling effect" on plaintiffs. It is specifically stated, "THUS IF THE ACTION IS NOT BROUGHT IN BAD FAITH SUCH FEES SHOULD NOT BE ALLOWED." at page 7, copies of the referenced pages attached hereto. The Senate Report No. 94-1011, reprinted in 1976 U.S. Code Cong. & AD. News 5908 reiterates the foregoing position saying an unsuccessful civil rights complaintant could be assessed fees only where it is shown that his suit was "CLEARLY FRIVOLOUS, VEXATIOUS, OR BROUGHT FOR HARASSMENT PURPOSES." at 5912, copy attached hereto. This position was held in *Christianburg Garment Co.* v. *EEOC*, 434 U.S. 412, 54 L. Ed 2d 648, 98 S. Ct. 694 directing the courts to avoid interjection of subjective views and hindsight logic into defendant fee awards.**

White v. *New Hampshire Department of Employment Security*, 629 F. 2d 697 (1st Cir. 1980) holds that the award of attorney fees goes to the 'prevailing party', rather than the attorney which was cited by the U.S. Supreme Court in *Evans* v. *Jeff*, 475 U.S. 717, 89 L. ED 2d 747 at 759. ***WHITE WAS OVERTURNED IN 455 U.S. 445, 71 L.ED 2D 325 ONLY ON THE MATTER OF THE APPLICATION OF FEDERAL RULE 59E AS TO THE TIME TO FILE FOR ATTORNEY FEES. THE U.S. SUPREME COURT HELD SPECIFICALLY IN WHITE THAT FEES WOULD BE DENIED WHERE IT UNFAIRLY SURPRISED OR PREJUDICED THE AFFECTED PARTY AND THAT THE LOCAL COURT RULES WOULD DETERMINE THE TIME TO FILE REQUESTS. THUS THE COURT RULES FOR THE FEDERAL COURTS IN OKLAHOMA ARE THE STANDARD.*** Rule 6E requires filing for attorney fee bill within fifteen (15) days after entry of judgment in the Northern and Western Districts. The same rule in the Eastern District requires ten (10) days. **JUDGE CARTER DID NOT MAKE HIS CONCLUSIONS OF LAW UNTIL THE FEE HEARING NEARLY 5 months later, as he failed to comply with the law to memorialize**

his opinion, and then only after Appellant called it to his attention. Appellee was too late to be awarded fees under the acknowledged federal guidelines. Instead of seeing that a proper memorialization was made he was making misrepresentations of law to defeat Appellant's right to have a rehearing of her request for disqualification.

This Court overlooked the application of federal law as to administrative decisions not regarded as judicial acts. ***Ex parte Virginia***, 100 U.S. 339, 25 L.Ed 676 (1880), ***Forrester*** v. ***White***, 98 L.Ed. 2d 555 (1988). Also overlooked was the Tenth Circuit holding that post-judgment requests for fees must brought within a ten day limit, ***Gurule*** v. ***Wilson***, 635 F. 2d 782 (1980). It was disregarded that Appellant brought the action against Appellee personally seeking personal liability under ***Kaimowitz*** v. ***Howard***, 547 F. Supp. 1345 and ***Kentucky*** v. ***Graham***, 473 U.S. 159, 87 L. Ed. 2d 114 (1985). In short this Court disregarded all federal law except ***United States*** v. ***Baskes***, 687 F. 2d 165 (7th Cir. 1982) which is apparently not held in much regard as it is not cited except as that in instance of a judge making an affidavit regarding another judge. It is used in Oklahoma only to attempt to support the odious procedure here. **IT IS NOTEWORTHY THAT THIS COURT CARRIED OVER TO ITS OPINION THE MISPRINT OF THE YEAR OF THE DECISION STATED in Appellee's brief.**

This Court application of ***Funnell*** v. ***Jones***, 737 P. 2d 105, 107, (Okl. 1985) holding her to the standards of an attorney are contrary to the applicable federal law in ***Haines*** v. ***Kerner***, 404 U.S. 519, 30 L.Ed. 2d 652, 92 S. Ct. 594; ***Estelle*** v. ***Gamble***, 429 U.S. 97, 50 L.Ed. 2d 251, 97 S. Ct. 285; ***Hughs*** v ***Rowe***, 449 U.S. 5, 66 L.Ed. 2d 163, 101 S. Ct. 173; ***Boag*** v. ***MacDougall***, 454 U.S. 364.70 L.Ed. 551, 102 S. Ct. 700, setting forth that pro se litigants are held to less stringent standards than attorneys as confirmed in 1988 by the 10th Circuit in an Oklahoma case, ***Meade*** v. ***Grubbs***, 841 F. 2d 1512. THUS ***DISREGARDING FUNNELL V. JONES as appropriate law applying to an Oklahoma case.*** THUS SAID CASE CANNOT BE APPLIED HERE WHERE FEDERAL LAW TAKES PRECEDENCE IN A §1983 action. Numerous federal cases denote concern for the pro se litigant, and an obligation to protect pro se litigants, ***Tagruth*** v. ***Zuck***, 710 F. 2d 90. The Oklahoma Supreme Court unfairly held ***Funnell*** to the standards of an attorney using a

case where a litigant had assistance of an attorney. Prior pro se cases by males were not held to those standards, ***Shaffer*** v. ***Jones,*** 650 P. 2d 918, ***Rourke*** v. ***Myers***, 84 P. 2d 639, ***Jefferson*** v. ***British American Oil,*** 145 P. 2d 387. THE OBVIOUS CONCLUSION IS PREJUDICE AGAINST A FEMALE LITIGANT as indicated in attached affidavit.

This Court clearly favored Appellee's counsel - which also would represent members of the Court in any actions against them thus are the Court's attorney. The record is replete with abuses by the assistant attorneys general but they are rewarded for abusing this Appellant and her rights. Judicial notice can be taken of the record and the actions post-judgment below in which Appellee and his counsel abused all civil procedure attacking Appellant and her incompetent ward in an effort to harass Appellant while her briefs were due. This was all in collusion with Judge Carter who had even suggested the action.

Canon 3 (5) of the American Bar Association's Code of Judicial Conduct demands that:

> "A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice. . ."

Commentary:

> A judge must perform judicial duties impartially and fairly. A judge who manifests bias on an basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expressions and body language, in addition to oral communications, can give to parties or lawyers in the proceeding, jurors, the media, and others an appearance of bias. A judge must be alert to avoid behavior that may be perceived as prejudicial."

and at Canon 3 (7)

> "A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit or consider ***ex parte*** communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:
>
> (a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters of issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ***ex parte*** communication and allows an opportunity to respond."

Clearly Judge Carter's conduct did not meet the aforesaid requirements.

The standard for review and application of law are cited in ***Munson*** v. ***Friske***, 754 F. 2d 683 (1985). In his campaign flyer this Opinion writer said "RESPECT OUR LAWS" and "Our courts must protect personal and property rights of all citizens." Appellant concludes by respectfully submitting that credo should be followed as this Court has overlooked the points of law and fact in affirming the district court's erroneous, arbitrary and capricious judgment. Appellant urges the reconsideration and withdrawal of the Memorandum Opinion of March 26, 1991. Appellant prays for reversal of the district court's judgment and for remand with instructions to enter judgment in favor of Appellant as set forth herein.

Respectfully submitted,

(Roberta Ann Funnell)
Roberta Ann Funnell
P.O. Box 26172,
Oklahoma City, OK 73126, (405)524-4636

Copy certified by District Court Clerk.

CERTIFICATE OF MAILING ATTACHED

94TH CONGRESS **REPORT**
1st Session **NO. 94-1558**

HOUSE OF REPRESENTATIVES

THE CIVIL RIGHTS ATTORNEY'S FEES AWARDS ACT OF 1976

September 15, 1976. -- Committed to the Committee of the Whole House on the State of the Union and ordered to be printed.

Mr. DRINAN, from the Committee on the Judiciary, submitted the following

REPORT

[Including cost estimate of the Congressional Budget Office]

[To Accompany H.R. 15460]

The Committee on the Judiciary, to whom was referred the bill (H.R. 15460) To allow the awarding of attorney's fees in certain civil rights cases, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

H.R. 15460, the Civil Rights Attorney's Fees Awards Act of 1976, authorizes the courts to award reasonable attorney fees to the prevailing party in suits instituted under certain civil rights acts. Under existing law, some civil rights statutes contain counsel fee provisions, while others do not. In order to achieve uniformity in the remedies provided by Federal Laws guaranteeing civil and constitutional rights, it is necessary to add an attorney fee authorization to those civil rights acts which do not presently contain such a provision.

The effective enforcement of Federal civil rights statutes depends largely on the efforts of private citizens. Although some agencies of the United States have civil rights responsibilities, their authority and resources are limited. In many instances where these laws are violated, it is necessary for the citizen to initiate court action to correct the illegality., Unless full and complete, it will remain a meaningless right. Because a vast majority of the victims of civil rights violations cannot afford legal counsel, they are unable to present their case to the courts. In authorizing an award of reasonable attorney's fees. H.R. 15460 is designed to give such persons effective access to the judicial process where their grievances can be resolved according to law.

[6]

The three key features of this attorney's fee provision are: (1) that awards may be made to any "prevailing party": (2) that fees are to be allowed in the discretion of the court: and (3) that awards are to be "reasonable". Because other statutes follow this approach, the courts are familiar with these terms and in fact have reviewed, examined, and interpreted them at some length.

1. *Prevailing party*

Under H.R. 15460, either a prevailing plaintiff or a prevailing defendant is eligible to receive an award of fees. Congress has not always been that generous. In about two-thirds of the existing statutes, such as the Clayton Act and the Packers and Stockyards Act, only prevailing plaintiffs may recover their counsel fees.[13] This bill follows the more modest approach of other civil rights acts.

It should be noted that when the Justice Department testified in support of H.R. 9552, the predecessor to H.R. 15460, it suggested an amendment to allow recovery only to prevailing plaintiffs. Assistant Attorney General Lee thought the phrase "prevailing party" might have a "chilling effect" on civil rights, plaintiffs, discouraging them from initiating law suits. The Committee was very concerned with the potential impact such a phrase might have on persons seeking to vindicate these important rights under Federal law. In light of existing case law under similar provisions, however, the Committee concluded that the application of current standards to this bill will significantly reduce the potentially adverse affect on the victims of unlawful conduct who seek to assert their federal claims.

On two occasions, the Supreme Court has addressed the question of the proper standard for allowing fees in civil right cases. In ***Newman*** v. ***Piggie Park Enterprises, Inc.***, 390 U.S. 400, 402 (1968) (per curiam), a case involving racial discrimination in a place of public accommodation, the Court held that a prevailing plaintiff "should ordinarily recover an attorney's fee unless special circumstance would render such an award unjust."

Five years later, the Court applied the same standard to the attorney's fee provision contained in Section 718 of the Emergency School Aid Act of 1972, 20 U.S.C. 1617. ***Northcross*** v. ***Memphis Board of Education,*** 412 U.S. 427 (1973) (per curiam). The rationale of the rule rests upon the recognition that nearly all plaintiffs in these suits are disadvantaged persons who are the victims of unlawful discrimination or unconstitutional conduct. It would be unfair to impose upon them the additional burden of counsel fees when they seek to invoke the jurisdiction of the federal courts. "If successful plaintiffs were routinely forced to bear their own attorneys' fees, few aggrieved parties would be in a position to advance the public interest by invoking the injunctive powers of the federal courts." ***Newman*** v. ***Piggie Park Enterprises, Inc., supra*** at 402.

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[13] 15 U.S.C. 15 (Clayton Act): 7 U.S.C. 210(f) (Packers and Stockyards Act).

Consistent with this rationale, the courts have developed a different standard for awarding fees to prevailing defendants because they do "not appear before the court cloaked in a mantle of public interest." ***United States Steel Corp.*** v. ***United States,*** 579 F.2d 259, 364 (3rd Cir. 1975). As noted earlier such litigants may, in proper circum-

[7]

stances, recover their counsel fees under H.R. 15460. To avoid the potential "chilling effect" noted by the Justice Department and to advance the public interest articulated by the Supreme Court, however, the courts have developed another test for awarding fees to prevailing defendants. Under the case law, such an award may be made only if the action is vexatious and frivolous, or if the plaintiff has instituted it solely "to harass or embarrass" the defendant. ***United States Steel Corp.*** v. ***United States, supra*** at 364. If the plaintiff is "motivated by malice and vindictiveness," then the court may award counsel fees to the prevailing defendant. ***Carrion*** v. ***Yeshira University,*** 535 F.2d 722 (2nd Cir. 1976). Thus if the action is not brought in bad faith, such fees should not be allowed. See, ***Wright*** v. ***Stone Container Corp.,*** 524 F.2d 1058 (8th Cir. 1975); see also ***Richardson v. Hotel Corp of America,*** 332 F. Supp. 519 (E.D. La. 1971), ***aff'd without published opinion,*** 468 F.2d 951 (5th Cir.1972). This standard will not deter plaintiffs from seeking relief under these statutes, and yet will prevent their being used for clearly unwarranted harassment purposes.

With respect to the awarding of fees to prevailing defendants, it should further be noted that governmental officials are frequently the defendants in cases brought under the statues covered by H.R. 15460, See, ***e.g., Brown*** v. ***Board of Education, supra; Gautreaus*** v. ***Hills, supra; O'Connor*** v. ***Donaldson, supra.*** Such governmental entities and officials have substantial resources available to them through funds in the common treasury, including the taxes paid by the plaintiffs themselves. Applying the same standard of recovery to such defendants would further widen the gap between citizens and government officials and would exacerbate the inequality of litigating strength. The greater resources available to governments provide an ample base from which fees can be awarded to the

prevailing plaintiff in suits against governmental officials or entities.[14]

The phrase "prevailing party" is not intended to be limited to the victor only after entry of a final judgment following a full trial on the merits. It would also include a litigant who succeeds even if the case is concluded prior to a full evidentiary hearing before a judge or jury. If the litigation terminates by consent decree, for example, it would be proper to award counsel fees, ***Incarcerated Men of Allen County*** v. ***Fair,*** 507 F.2d 281 (6th Cir. 1974): ***Parker*** v. ***Matthews,*** 411 F. Supp. 1059 (D.C.C. 1976) : ***Aspira of New York, Inc.*** v. ***Board of Education of the City of New York,*** 65 F.R.D. 541 (S.D.N.Y. 1975). A "prevailing" party should not be penalized for seeking an out-of-court settlement, thus helping to lessen docket congestion. Similarly, after a complaint is filed, a defendant might voluntarily cease the unlawful practice. A court should still award fees even though it might conclude, as a matter of equity, that no formal relief, such as an injunction, is needed. ***E.g., Parham*** v. ***Southwestern Bell Telephone Co.,*** 433 F.2d 421 (8th Cir. 1970); ***Brown*** v. ***Gaston County Dyeing Machine Co.,*** 457 F.2d 1377 (4th Cir.), cert denied, 409 U.S. 982 (1972) : see also ***Lea*** v. ***Cone,*** 438 F.2d 86 (4th Cir. 1971); ***Evers*** v. ***Dwyer,*** 358 U.S. 202 (1958).

A prevailing defendant may also recover its fees when the plaintiff seeks and obtains a voluntary dismissal of a groundless complaint,

[8]

Corcoran v. ***Columbia Broadcasting System,*** 121 F.2d 575 (9th Cir. 1941), as long as the other factors, noted earlier, governing awards to defendants are met. Finally the courts have also awarded counsel fees to a plaintiff who successfully concludes a class action suit even though that individual was not granted any relief. ***Parham*** v. ***Southwestern Bell Telephone Co., supra; Reed*** v. ***Arlington Hotel Co., Inc.,*** 476 F.2d 721 (8th Cir. 1973).

Furthermore, the word "prevailing" is not intended to require the entry of a ***final*** order before fees may be recovered. "A district court must have a discretion to award fees and costs incident to the final disposition of interim matters." ***Bradley*** v. ***Richmond School***

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[14] Of course, the 11th Amendment is not a bar to the awarding of counsel fees against state governments. ***Fitzpatrick*** v. ***Blitzer,*** ---- U.S.---, 96 S.Ct. 2668 (June 25, 1976).

Board,, 416 U.S. 696, 723 (1974); see also *Mills Corp.* v. *Electric Auto-Lite Co.*, 396 U.S. 375 (1970). Such awards pendente lite are particularly important in protracted litigation, where is difficult to predicate with any certainty the date upon which a final order will be entered. While the courts have not yet formulated precise standards as to the appropriate circumstances under which such interim awards should be made, the Supreme Court has suggested some guidelines. "(T)he entry of any order that determines substantial rights of the parties may be an appropriate occasion upon which to consider the propriety of an award of counsel fees. . ."*Bradley* v. *Richmond School Board, supra*, at 722 n.28.

2. *Judicial discretion*

The second key feature of the bill is its mandate that fees are only to be allowed in the discretion of the court. Congress has passed many statutes ***requiring*** that fees be awarded to a prevailing party. [15] Again the Committee adopted a more moderate approach here by leaving the matter to the discretion of the judge,guided of course by the case law interpreting similar attorney's fee provisions. This approach was supported by the Justice department on Dec. 31, 1975. The Committee intends that, at a minimum, existing judicial standards, to which ample reference is made in this report, should guide the courts in construing H.R. 15460.

3. *Reasonable fees*

The third principal element of the bill is that the prevailing party is entitle to "reasonable" counsel fees. The courts have enumerated a number of factors in determining the reasonableness of awards under similarly worded attorney's fee provisions. In *Johnson* v. *Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), for example,the court listed twelve factors to be considered, including the time and labor required, the novelty and difficulty of the questions involved, the skill needed to present the case, the customary fee for similar work, and the amount received in damages,

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[15] E.g., 7 U.S.C. 499(b) (Perishable Agricultural Commodities Act) : 15 U.S.C. (1640(a) (Truth-in-Lending Act); 46 U.S.C. 1277 (Merchant Marine Act of 1936); 47 U.S.C. 206 (Communications Act of 1934).

if any, *Accord: Evans* v. *Sheraton Park Hotel*, 503 F.2d 177 (D.C. Cir. 1974); see also *United States Steel Corp.* v. *United States, supra.*

Of course, it should be noted that the mere recovery of damages should not preclude the awarding of counsel fees. [16] Under the anti

[5912]

LEGISLATIVE HISTORY
P.L. 94-559

This bill, S. 2278, is an appropriate response to the *Alyeska* decision. It is limited to cases arising under our civil rights laws, a category of cases in which attorney fees have been traditionally regarded as appropriate. It remedies gaps in the language of these civil rights laws by providing the specific authorization required by the Court in *Alyeska*, and makes our civil rights laws consistent.

It is intended that the standards for awarding fees be generally the same as under the fee provisions of the 1964 Civil Rights Act. A party seeking to enforce the rights protected by the statutes covered by S. 2278, if successful, "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Newman* v. *Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968) [4]

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[3] These civil rights cases are too numerous to cite here. See, e.g. *Sims* v. *Amos*, 340 F. Sup. 691 (M.D. Ala 1972). Aff'd 93 S. Ct. 290, 409 U.S. 942, 34 L.Ed. 2d 215 (1972); *Sanford Daily* v. *Zurcher*, 366 F. Supp. 18 (N.D. Cal. 1973); and cases cited in *Alyeska Pipeline, supra*, at n. 46. Many of the relevant cases are collected in "Hearings on the Effect of Legal Fees on the Adequacy of Representation Before the Subcom. on Representation of Citizen Interests of the Senate Comm. on the Judiciary." 93d Cong. 1st sess. pt III, at pp 888-1024 and 1060-62.

[4] 88 S. Ct. 964. 19 L.Ed. 2d 1263. In the large majority of cases the party or parties seeking to enforce such rights will be the plaintiffs and/or plaintiff-intervenors. However, in the procedural posture of some cases, the parties seeking to enforce such rights may be the defendants and/or defendant-intervenors. See, e.g. *Shelley* v. *Kraemer*, 334 U.S. 1 (1948)

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[16] Similarly, a prevailing party is entitled to counsel fees even if represented by an organization or if the party is itself an organization. *Incarcerated Men of Allen County* v. *Fair, supra; Torres* v. *Rachs*, 69 F.R.D.343 (S.D.N.Y. 1975), aff'd ---F.2d ---(2d Cir. June 25, 1976); *Fairley* v. *Patterson*, 493 F2d 598 (5th Cir. 1974).

Such "private attorneys general" should not be deterred from bringing good faith actions to vindicate the fundamental rights here involved by the prospect of having to pay their opponent's counsel fees should they lose. ***Richardson*** v. ***Hotel Corporation of America***. 332 F. Supp. 519 (E.D. La. 1971). aff'd, 468 F. 2d 951(5th Cir. 1972). (A fee award to a defendant's employer, was held unjustified where a claim of racial discrimination, thought meritless, was made in good faith.) Such a party, if unsuccessful, could be assessed his opponent's fee only where it is shown that his suit was clearly frivolous, vexatious, or brought for harassment purposes. United States Steel Corp. v. ***United States,*** 385 F. Supp. 346 (W.D. Pa. 1974), aff'd, 9 E.P.D. ¶ 10,225 (3d Cir. 1975). This bill thus deters frivolous suits by authorizing an award of attorneys' fees against a party shown to have litigated in "bad faith" under the guise of attempting to enforce the Federal rights created by the statues listed in S. 2278. Similar standards have been followed not only in the Civil Rights Act of 1964, but in other statutes providing for attorneys' fees. E.g., the Water Pollution Control Act, 1972 U.S. Code Cong. & Adm. News 3747; the Marine Protection Act, Id. at 4249-50; and the Clean Air Act, Senate Report No. 91-1196, 91st Cong., 2d Sess., p. 483 (1970). ***See also Hutchinson*** v. ***William Barry, Inc.***, 50 F. Supp. 292, 298 (D. Mass. 1943) (Fair Labor Standards Act).

In appropriate circumstances. counsel fees under S. 2278 may be awarded pendente lite. ***See Bradley*** v. ***School Board of the City of Richmond,*** 416 U.S. 696 (1974). [5] Such awards are especially appropriate where a party has prevailed on an important matter in the course of litigation, even when he ultimately does not prevail on all issues. See ***Bradley, supra; Mills*** v. ***Electric Auto-Lite Co.***, 396 U.S. 375 (1970). Moreover, for purposes of the award of counsel fees, parties may be considered to have prevailed when they vindicate rights through a consent judgment or without formally obtaining relief. ***Kopet*** v. ***Esquire Realty Co.***, 523 F. 2d 1005 (2d Cir. 1975), and cases cited therein; ***Parham*** v. ***Southwestern Bell Telephone Co.***, 433 F. 2d

AFFIDAVIT

STATE OF OKLAHOMA)
)
ss:
COUNTY OF OKLAHOMA)

Roberta Ann Funnell, the undersigned, of lawful age and being first duly sworn upon oath, deposes and states as follows:

1. Late Friday, September 9, 1988, I received Judge Rakestraw's September 7, 1988, notice that all pending motions in CJ-87-5512 were set for hearing before Judge Glenn Dale Carter on Friday, October 14, 1988. I had pending a Request for Rehearing Motion for Certification of Disqualification By Assigned Trial Judge and for Change of Venue filed on 11 August 1988, after Judge Carter had denied my Motion on August 4, 1988. My Request included the information as to the disqualification of the 7th Judicial District Judges and was made under Rule 15b of Rules for the District Courts.

2. On Monday, August 29, 1988, I had received a copy of a Response to my Request by Robert Martin represented by two assistant attorneys general, Cathy Clinton Dabney and Marc L. Bovos falsely claiming that my Request had not been timely filed. Robert Martin was sent a copy of the false Response. On August 30, 1988, I filed an Objection sending copies to the Chief and Presiding Judges. Judge Saied had been acting as Presiding Judge administratively, but had retired and the Court Clerk had not been advised of a replacement. That was information privy to Robert Martin.

3. After receiving the notice in §1 above, I believed that my Request had been intercepted and Judge Rakestraw mislead because of an earlier documented experience of irregularity in the filing of Martin's Answers to Interrogatories. I had not received any such Answers and there was no entry on the docket sheet although a file search revealed a file stamped copy loose in the back of the file. I immediately started preparation of a Petition for Writs of Prohibition/Mandamus to the Oklahoma Supreme Court as Rule 15 provided no procedure when both the Chief Judge and Presiding Administrative Judge are disqualified to act. My reason for the request for Change of Venue was to get the court file into another county to avoid tampering and loss of documents which had been the pattern since 1969.

4. In an attempt to set a hearing date I finally reached the Supreme Court Referee, Wayne Snow late Monday. He asked many questions; then stated it was probably too late to file for the Writs and to call him later, which I did. Again there was stalling by him. He finally agreed that the Petition could be filed by September 16, 1988, under the time computation in 12 O.S.§2006 A and D. He stated that Justice Doolin would not participate. On September 30, 1988, I received a copy of Justice Doolin's Order stamped September 20, 1988, postmarked September 22, 1988, which ordered the respondents to respond no later than September 29, 1988, and set the oral presentation for October 3, 1988 at 10:00 A.M., a Monday. I received the responses late on September 30, 1988, and Saturday, October 1, 1988. One of the Attorney General's envelopes was postmarked the afternoon of September 30, 1988.

5. I filed OBJECTIONS AND REQUEST FOR CONTINUANCE on Monday, October 3, 1988, when I arrived 15 minutes before 10: A.M., I found that Referee Snow was already meeting with the attorneys although he had indicated to me earlier he was having trouble with his eyes and could not read. I had been led to believe that he would not be conducting the oral presentation . He denied my request for continuance. He would not allow me to respond to each of the 9 or 10 lawyers after each spoke; then limited me to only the amount of time had by each of them. When I stated that Appellee had not served me with Answers to Interrogatories. He said to the lawyers, "Well, if she was a good enough attorney she would have gotten around that." They all laughed. Several sexist remarks were made.

6. At all hearings before Judge Carter and later Judge Brown I was referred to as "she" with a slurring of sound. At the hearing before Judge Brown, Judge Carter's boyhood friend, B. J. Cooper complained of affidavits that had been made by prior courtroom observers and turned to a stately woman spectator and called her a "stool pigeon". Judge Brown laughed as she stood to indignantly deny the charge. I was repeatedly berated.

7. Since 1969, documents belonging in court files have been removed, altered or concealed by Robert Martin, by attorneys, other court employees and judges. My cases have related to documents forged or altered by various defendants and concealments. When over 200 pages of pleadings and documents were taken from Robert Martin's closet where he had improperly stored them, I asked the police to investigate. They reported that they were refused on the claim the courthouse was under the sheriff's jurisdiction. I asked the sheriff's office and was stalled then finally told they would not

investigate. My name had been forged to a Quit Claim Deed for property that belonged in an estate that owed me money. A lawyer friend of Judge Joe Cannon had signed as a witness to the signature and his employee had signed as notary. The forgery was confirmed by the expert who started the FBI's questioned documents section. I believe that Judge Joe Cannon directed Robert Martin to remove my file to the latter's office where they "disappeared" for over a year then suddenly appeared again on top of a file cabinet in the Court Clerk's office.

FURTHER AFFIANT SAYETH NOT.

(Roberta Ann Funnell)
ROBERTA ANN FUNNELL

Subscribed and sworn to before me this 6th day of May, 1991.

(Candice L. Moseley)
NOTARY PUBLIC

My Commission Expires:
(5-29-94)

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Filed in the Supreme Court January 27, 1989.

ROBERTA ANN FUNNELL,)
Appellant,)
-vs-) No. 72,451
ROBERT MARTIN,)
Appellee.)

MOTION TO STAY EXECUTION OF JUDGMENT

COMES NOW appellant, Roberta Ann Funnell, and respectfully moves this Court to stay the execution of judgment in the case below, number CJ-87-5512, filed in Oklahoma County, and for good cause shows the Court as follows:

1. This appeal is a matter of first impression in this state and this federal circuit, and has never been directly ruled upon by other jurisdictions. It relates to liability of a court administrator who by statute performs only non-judicial acts.

2. This appeal is taken from a money judgment for attorney fees awarded to appellee's counsel, the Attorney General of Oklahoma, who also represents the judiciary of this state including this Court.

Said position gives an undue advantage to a state employee (such as this appellee) in any matter before the judiciary of this state. When ***inter alia*** this undue advantage for state employees was reported at a public hearing of the Governor's Constitutional Revision Study Commission by this citizen (appellant), the Attorney General acknowledged his office had conflicts of interest in some of their representations.

3. This appeal was timely filed on January 18, 1989, from an order of December 19, 1988, by assigned judge, Honorable Glenn Dale Carter. Said order was made after Judge Carter was requested to certify his disqualification by a second motion for same filed December 9, 1988, which Judge Carter claimed he had not seen although his office had signed for a hand delivered copy and another copy had been mailed by the Oklahoma County Court clerk.

4. Upon seeing a copy of the disqualification motion signed by Christine Perryman, his employee, Judge Carter flashed an enigmatic look at the assistant attorney general, James Franks, who claimed that he had not had fifteen plus three days to respond. Judge Carter said the motion was "not ripe" for hearing contrary to statute and rule 15. Upon appellant's urging that their position was a denial of her constitutional rights, the Judge and Mr. Franks made a deal to hear the motion for disqualification if Frank's motion for attorney fees was heard. Judge Carter denied appellant's motion then proceeded to hear the motion for attorney fees over appellant's objection that ***inter alia*** Application to Stay District Court Proceedings was **and still is pending in this Court,** case number 71,726, that appellant was requesting a re-presentation of her disqualification motion under Rule 15, and that she could not respond as to the merits of the case regarding Martin.

5. Appellant inquired extensively regarding obtaining a supersedeas bond and did not learn until January 4, 1989, that the very few companies providing such bonds also required representation by an attorney with whom the company did business. A Rule 1.13 Motion to Stay was filed that day in the district court. Appellant had been under hardship to obtain information as offices, businesses and law libraries hours were limited during the Christmas and New Year's Holidays. Also, no judgment had been executed by Judge Carter as required for a bond.

6. Appellant had been advised by the District Court Clerk that they could accept only a supersedeas bond from a bonding company or cash, which appellant did not have, although 12 O.S.§968 refers to a "written undertaking," ***without specification,*** to be executed for a stay.

7. Appellant sought attorneys and did not learn until January 25, 1989 that representation was refused when she received a letter of January 23, 1989, copy attached as Exhibit 1. On January 26, 1989, appellant was advised that one agency where she was personally known, would modify their requirement to writing her insurance and require collateral in full, copy of letter of January 26, 1989, attached as Exhibit 2. Personal inquiry disclosed that out-of-state property would not be considered for collateral by the Oklahoma Company.

8. Judge Carter denied appellants' Motion to Stay the afternoon of January 26, 1989, although the ambiguity of the term "written undertaking" is apparent and appellant offered to execute a promissory note with two warranty deeds as security to be held by the court. The assistant attorney general urged that the Motion to Stay was not timely filed and "good cause" had not been shown. Appellant has reason to believe that the assistant attorney general and Judge Carter had again made a deal as they were both startled when appellant discovered them in deep conversation before the start of the hearing.

9. In ***Mapco, Inc.*** v. ***Means,*** Okl. .538 P.2d 593 (1975), this Court held that it had inherent power to grant supersedeas or stay of execution in all cases pending before it wherein the particular statutes are silent on the subject. The statute is silent as to what is a "written undertaking". The ***Mapco*** Court further held, citing ***H*** v. ***Farmer's and Merchants' Bank***, 155 Okl.284, 8 P.2d 655, that there was nothing in the statutes at all indicating that the right to stay is lost until the final determination of the appeal, the judgment remaining unexecuted. This Court has jurisdiction under 12 O.S. § 974.

WHEREFORE, in the interest of justice and appellant's rights to equal protection of the law, appellant respectfully prays this Court to enter a stay of execution on such terms as is just considering the relative wealth of the State of Oklahoma and the appellant who is without sufficient funds to post a cash undertaking.

Respectfully submitted,
(Roberta Ann Funnell)
Roberta Ann Funnell, PRO SE
2306 S.E. 49th St., #124
Oklahoma City, OK 73129
(405)670-1943

VERIFICATION

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

I, Roberta Ann Funnell, being of lawful age hereby depose and staste under oath that I have read the foregoing and that the facts are true and correct.

(Roberta Ann Funnell)
Roberta Ann Funnell

Subscribed and sworn to before me this 27th day of January, 1989.

(Gerry Wood)
NOTARY PUBLIC
My Commission Expires:
6-20-91

LAW OFFICES OF
JOHN W. NORMAN, INCORPORATED AND ASSOCIATES

January 23, 1989

Ms. Roberta Funnell
2306 S.E. 49th St., apt. 124
Oklahoma City, OK 73129

Re: Pending Cases Closed

Dear Ms. Funnell:

Thank you for contacting our office recently to inquire about whether we would be interested in representing you. We have reviewed the information you provided. We regret to inform you that we cannot accept employment in your case.

Please understand that we are not expressing an opinion about the validity or value of any claim you may have, and you should feel free to contact other attorneys regarding your potential claim.

If we may be of assistance to you in the future, please do not hesitate to contact us.

Sincerely yours,
(John W. Norman)
John W. Norman

JWN/ta

EExhibit 1

MC ELDOWNEY, MC WILLIAMS, DEARDEUFF & JOURNEY, INC.

January 26, 1989

Ms. Roberta Ann Funnell
2306 S. E. 49th Street
Okla. City, OK 73129

Re: Supersedeas Bond

Dear Ms. Funnell:

This is to inform you that in order for our firm to be in a position to give you assistance in obtaining a Supersedeas Bond, we must write your insurance and/or you must be represented by an attorney with whom we do business.

Also, in the event that we could assist you in this, we would need a current financial statement from you, and court documentation. If we were successful in getting the bond approved with a surety, after submitting your financial statement and court documentation for their review, we would still have to have from you, as a requirement of the surety, collateral to support the bond.

Best regards
(Carolyn Wilson)
Carolyn Wilson
Bond Department Supervisor

CSW/hs

Exhibit 2

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Filed in the Supreme Court January 30, 1989.

ROBERTA ANN FUNNELL,	)
Appellant,	)
-vs-	) No. 72,451
ROBERT MARTIN,	)
Appellee.	)

AMENDMENT/SUPPLEMENT TO MOTION TO STAY EXECUTION OF JUDGMENT

Appellant amends her Motion to Stay Execution of Judgment filed on January 27, 1989, to add the following as to paragraph four (4) of said motion:

Appellant filed on December 27, 1988, a timely Request under rule 15 b. to Re-present her Motion for Certification of Disqualification by Assigned Trial Judge to a Second Judge to be Assigned By The Supreme Court Under Rule 9(f) of Rules For The Administration of Courts. Copies were sent to the outgoing and incoming Chief Judges in Oklahoma County and to the designated Presiding Judge of the Seventh Judicial District, Honorable Arthur Lory Rakestraw who is a respondent in this Court's case number 71,726. In addition to this appellant's affidavit, said Request had attached affidavits of two courtroom observers, copies attached hereto as exhibits 1 and 2, as to the prejudice demonstrated by the assigned trial judge.

Appellant supplements her Motion to Stay Execution of Judgment to add the following paragraphs.

After the filing of the Motion to Stay Execution of Judgment, this appellant received a letter dated January 23, 1989, from Judge Rakestraw. It was the first response to Appellant's letters of January 6 and 20, 1989, which had attached copies of a letter of January 3, 1989, from the Honorable Leamon Freeman, Chief Judge for January, in which he stated that due to the disqualification of all Judges of the Seventh District "it will be necessary to submit any request regarding Judge Carter to the Supreme Court of Oklahoma". Copies of all the aforesaid letters are attached hereto as exhibits 3 and 4 respectively. Judge Rakestraw's delay in forwarding the appellant's letter to the new Presiding Judge is a further denial of appellant's constitutional rights which are delayed and denied by the manner of application of rule 15, which is contrary to statute. Appellant reiterates that her state and federal constitutional rights

Appellant reiterates that her state and federal constitutional rights to an unprejudiced court have been and continue to be denied as Judge Carter continues to oppressively act.

Appellant further amends her Motion to Stay Execution of Judgment to add paragraph 10 as follows, adopting the verification in her Motion:

10. Appellant is and has been under undue hardships due to suffering multiple car accident injuries and inability to earn income. She also helps provide for her aunt for whom she is the legal guardian in an effort to prevent the aunt from becoming institutionalized and a burden to the taxpayers. Appellant is also responsible for extra expenses and medications of her paralyzed mother. The trial court in rendering its decision failed to take into consideration the comparative wealth of appellant and the State of Oklahoma, and that in civil rights cases in federal court the United States is not awarded attorney fees. The fees were awarded while denying the appellant's rights.

Respectfully submitted,
(Roberta Ann Funnell)
Roberta Ann Funnell, PRO SE
2306 S.E. 49th St., #124
Oklahoma City, OK 73129
(405)670-1943

AFFIDAVIT

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

I, Shirley Duncan, being of legal age and duly sworn under oath depose and state that the following is made on my personal knowledge and stated freely and willingly:

1. I reside at 501 N. 6th Street, Purcell, Oklahoma 73080.

2. I am acquainted with Roberta Ann Funnell through several boards and church related organizations in Oklahoma, which have a concern regarding the legal/judicial system and support the idea of "court watching" to observe and report on conduct in court proceedings.

3. I attended a hearing of Mrs. Funnell's case CJ-87-5512 before Judge Glenn Dale Carter, on Friday, October 14, 1988, at 1:30 p.m.

4. Over Mrs. Funnell's objection Judge Carter required her to present her motion to certify his disqualification. After calling on her to rebut the Lawyer's arguments, Judge Carter winked at the lawyers sitting away from the counsel table in chairs just in front and right of me. Said lawyers had been identified as B.J. Cooper and Ronald Hudson. Judge Carter's expression appeared to ridicule Mrs. Funnell.

5. Later Judge Carter kept asking one of the women lawyers named Peterson to present her motions as though prompting or reminding her. The other woman lawyer identified as Dabney spoke with Judge Carter after the hearing recessed for the second time.

Further affiant sayeth not!

(Shirley Duncan)
Shirley Duncan

Subscribed and sworn before me this 21 day of November, 1988.

(Angela Hunnell)
NOTARY PUBLIC

My Commission Expires:
01-24-89

Exhibit 1

A F F I D A V I T

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

I, Donna Gates Meyer, of lawful age and first and duly sworn upon oath depose and state that the following is made on my personal knowledge and is set forth freely and willingly.

1. I reside at 9700 Lakeland Terrace, Oklahoma City, Oklahoma 73162.

2. I am acquainted with Roberta Ann Funnell through several church and civic organizations. I am concerned about the judicial

system and support the idea of observing and reporting on the conduct in court proceedings.

3. I attended a hearing of Mrs. Funnell's case CJ-87-5512 before Judge Glenn Dale Carter on Monday, December 19, 1988 in the Oklahoma County Courthouse.

4. At the beginning of the hearing Judge Carter referred to a letter of November 25, 1988 from Mrs. Funnell and denied her request for his disqualification; he then mentioned a motion for attorney fees.

5. Mrs Funnell objected to said motion as premature as she had a motion for disqualification pending and to further proceed would deny her constitutional rights. Judge Carter claimed he had not seen Mrs. Funnell's motion. Mrs Funnell handed the court reporter a document and stated that it was a copy of the motion with a signature of his employee having received a copy. I later saw the signature on the document when it was retrieved from the court reporter after the hearing.

6. Judge Carter claimed Mrs. Funnell's motion was "not ripe for hearing" and when he moved onto the attorney fee matter, Mrs. Funnell objected again citing the law and the rules. The lawyer from the Attorney General's office, identified as James Franks, had at first said the A.G.'s office had not had 15+3 days to respond to Mrs. Funnell's motion. After Mrs. Funnell cited the law again, Mr. Franks agreed to let her motion be heard if the judge would hear his motion for attorney fees.

7. (a.) When Mrs. Funnell began her presentation the judge, at first, would not look at her, shuffled papers and appeared inattentive. At times the judge noticeably smirked particularly when she said she "believed the judge had predetermined her case."

(b.) The judge rolled his eyes upward, appeared nervous, and with a disgusted look tilted his chair back when Mrs. Funnell said that he had an interest in awarding attorney fees because the Attorney General's office represented him in the Supreme Court in her petition for original jurisdiction.

(c.) Mrs. Funnell spoke about new evidence of prejudice in an affidavit made by a court observer, concerning Judge Carter's winking in the direction of defendant counsel, Ronald Hudson and his counsel, B.J. Cooper, during the hearing October 14, 1988.

8. Attorney Franks rebuttal was that nothing new had transpired and the court was not biased.

9. Attorney Cooper accused Mrs. Funnell of refusing to abide by the rule of law. He said he had received Mrs. Funnell's letter of October 22, 1988 about the "judge winking" during the October 14th

hearing. He said that his patience had reached the breaking point and then he read to the court his response letter dated November 9, but, by mistake, not postmarked until November 22. The letter he read aloud (to the courtroom) sounded intimidating, mentioned prosecution for slander and claimed the "winking" was a lie no matter who was said to have seen this act.

10. Mrs. Funnell's rebuttal read aloud her November 28, reply to Attorney Cooper's letter postmarked November 22. Her letter said that Mr. Cooper "could not have seen everything as he was the acknowledged note-taker in the October 14th hearing." Mrs. Funnell told the court she did not believe Attorney Cooper's letter was misaddressed, as he had claimed, because he had not sent the first envelope inside the second envelope as is customary in the proceedings of law.

11. Judge Carter denied Mrs. Funnell's motion to disqualify himself and stated, at Attorney Cooper's request that nothing new had been presented.

12. Mrs. Funnell repeatedly objected to continuing a hearing on attorney fees and stated her motion should be heard by another judge under the rules, but Judge Carter continued.

13 .Attorney Franks stated that Mrs. Funnell had accused his client, Mr. Martin, Court Administrator, of conspiracy and misconduct with official records. Attorney Franks claimed his client had merely been following procedures of his office and that Mrs. Funnell's case against his client was frivolous as his client had absolute immunity.

14. Mrs. Funnell said she could not argue the merits of the case as she would be waiving the disqualification and that her constitutional rights to a fair trial were being denied.

15. Attorney Franks rebutted saying Mrs. Funnell was like a naughty child who rang the doorbell and ran away.

16. Judge Carter ruled in favor of Attorney Franks and, without requiring any testimony or proof of time spent, awarded $3,977.00 in fees. Attorney Franks was asked to submit a journal entry.

17. Judge Carter asked the attorney identified as Mrs. Peterson about some objections about discovery, to which she replied she did not have a copy. Mrs. Funnell said she did not have a copy either and that the matter should be handled in a pre-trial.

18. Judge Carter mentioned several times about a pre-trial hearing scheduled January 3, 1989 and sounded so zealous about it that I doubt the fairness of such a hearing. From what I have observed I believe Mrs. Funnell can not get a fair hearing.

Further affiant sayeth not.

(Donna Gates Meyer)
Donna Gates Meyer

Subscribed and sworn before me this 27th day of December, 1988.

(Jim Davis)
NOTARY PUBLIC

Commission Expires:
11-30-89

Exhibit 2

DISTRICT COURT
SEVENTH JUDICIAL DISTRICT, STATE OF OKLAHOMA
OKLAHOMA AND CANADIAN COUNTIES
OKLAHOMA CITY, OKLAHOMA 73102

January 23, 1989

Ms. Roberta Ann Funnell
2306 S.E. 49th St., #124
Oklahoma City, OK 73129

In re: Funnell vs. Funnell, et al, CJ-87-5512

Dear Mrs. Funnell:

This will acknowledge your letter of January 20, 1989. I am no longer the Presiding Administrative Judge of the Seventh Judicial District. That position is now held by The Honorable James L. Gullett and I am therefore forwarding your letter to him together with your previous letter.

Sincerely yours,
(Arthur Lory Rakestraw)
Arthur Lory Rakestraw

ALR/lh
cc: Hon. James L. Gullett

Exhibit 3

Filed in District Court January 20, 1989

Honorable Arthur Lory Rakestraw, Presiding Judge
7th Judicial District
Oklahoma County Courthouse
Oklahoma City, OK 73102

Re: Funnell v. Funnell, etc. et al., CJ-87-5512, Plaintiff's Request to Re-present her Motion for Certification of Disqualification by Assigned Trial Judge to a Second Judge to be assigned by the Supreme Court Under Rule 9 (f) of Rules for the Administration of Courts, and letter of January 6, 1989, to Presiding Judge Rakestraw

Dear Judge Rakestraw:

The above Request was timely filed December 27, 1988, with a copy hand delivered to your office. The letter of January 6, 1989, copy attached, was mailed to Your Honor on January 6, 1989. No response has been received.

My request for Your Honor to submit the above Request to the Supreme Court Chief Justice is herewith reiterated. When the procedural question arose previously the Supreme Court Referee indicated that a second district judge should hear such a request, and if necessary, to be appointed by the Chief Justice under the Rules.

Thank you for your cooperation and attention to this matter of the undersigned's state and federal Constitutional Right.

Sincerely,
(Roberta Ann Funnell)
Roberta Ann Funnell, *pro se*
2306 S.E. 49th St., #124
Oklahoma City, OK 73129
(405) 670-1943

CC: State Administrative Director of the Courts, 1915 N. Stiles, Suite 305, Oklahoma City, OK 73105; counsel of record, Honorable Rudolph Hargrave, Chief Justice

Exhibit 4 on 3

January 6, 1989

Honorable Arthur Lory Rakestraw, Presiding Judge
7th Judicial District
Oklahoma County Courthouse
Oklahoma City, OK 73102

Re: Funnell v. Funnell, CJ-87-5512, Plaintiff's Request Under Rule 15 b. to Re-present her Motion for Certificathin of Disqualification by Assigned Trial Judge to a Second Judge to be assigned by the Supreme Court Under Rule 9 (f) of Rules for the Administration of Courts.

Dear Judge Rakestraw:

A copy of the above request was hand delivered to your office on December 27, 1988, with a copy of a letter to the Chief Judge Thomas Smith and Chief Judge Designate Leemon Freemon. The latter has responded as being disqualified, copy of letter of January 3, 1989, attached hereto, and that it is his understanding that all judges of then 7th Judicial District have disqualified.

As per my above Request and Judge Freeman's letter it is necessary to submit my Request to the Supreme Court Chief Justice under Rule 9(f).

Thank you for your attention.

Sincerely,

(Roberta Ann Funnell)
ROBERTA ANN FUNNELL, *PRO SE*
2306 S.E. 49th St., #124
Oklahoma City, OK 73129
(405) 670-1943
cc: counsel of record

DISTRICT COURT
SEVENTH JUDICIAL DISTRICT, STATE OF OKLAHOMA
OKLAHOMA AND CANADIAN COUNTIES
OKLAHOMA CITY, OKLAHOMA 73102

January 3, 1989

Ms. Roberta Ann Funnell
2306 S.E. 49th St., #124
Oklahoma City, OK 73129

Dear Mrs. Funnell:

It is my understanding that all Judges of the 7th Judicial District have disqualified which resulted in the Oklahoma Supreme Court assigning Judge Carter to the case.

Therefore, it will be necessary to submit any request regarding Judge Carter to the Supreme Court of Oklahoma.

Sincerely,
(Leamon Freeman)
LEAMON FREEMAN
Chief Judge

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Filed in the Supreme Court January 18, 1989.

PETITION OF ERROR
AMENDMENTS FILED FEBRUARY 16, 1989 & OCTOBER 9, 1989

1. Trial court erred in making findings of fact on December 19, 1988, that appellee had engaged in no conspiracy and acted at all times in good faith, within the normal and ordinary duties of his office, pursuant to proper orders and directives of the District Court, with no intention or desire to harm or damage the Plaintiff in any way, all of which is contrary to the record and evidence.

2. Trial court erred in making findings of fact on December 19, 1988, that discovery had been fully answered by defendant/appellee and disregarding that appellee had acted in particular bad faith in service of responses to interrogatories and in responses to same.

3. Trial court erred in holding that plaintiff's action was without basis in law or fact and was frivolous when issue of liability of a court administrator, who by law can do only non-judicial acts, is a matter of **first impression** in this state and federal circuit, and not directly ruled on by other jurisdictions.

4. Trial court erred in awarding attorney fees for state government entity when the **federal** government is not allowed such fees.

5. Trial court erred in awarding attorney fees for state government entity's fund which also funds representations of the trial court who would have an interest in increasing such a fund.

6. Trial court erred in failure to require the attorney general to present detailed time records and offer evidence of necessity, if any, for the hours claimed.

7. Trial court erred by failure to acknowledge that the attorney general had deliberately run up the costs of defense and had filed misrepresentations of law repeatedly, contrary to oath and rules of professional responsibility.

8. Trial court erred in failing to consider the relative wealth of appellant and the State of Oklahoma when awarding attorney fees.

9. Trial court erred in failure to adhere to state and federal rulings on motions for attorney fees and appellant's constitutional rights to due process.

10. Trial court and attorney general acted contrary to law and court rules in making a deal on December 19, 1988, to allow appellant's motion for certification of disqualification of the trial judge **filed, mailed and/or delivered on December 9, 1988,** to be heard if the court proceed with the application for attorney fees.

11. Trial court erred in disregarding appellant's civil and constitutional rights to have her motion for certification of disqualification of the trial judge, **filed, mailed and/or delivered on December 9, 1988**, to be heard by a second judge before proceeding to hear the application for attorney fees to which she could not present argument on the merits without waiver of the disqualification.

12. Trial court erred by predetermination of appellant's claim in holding an ***ex parte*** hearing on April 19, 1988, with appellee, then sealing a transcript of the proceedings after ordering the time for filing dispositive motions without any discovery schedule or scheduling conference, and concealing the transcript from appellant.

13. Trial court erred by acting contrary to law and court rules by failing to memorialize its orders, judgments and decrees within a reasonable time after their rendition to the prejudice of appellant, and by awarding attorney fees to appellee despite conduct in item 7.

14. Trial court erred in denial of appellant's constitutional rights to due process, to a fair and full hearing, and an unbiased judge and grossly abused his discretion in awarding attorney fees.

14. Trial court erred in denial of appellant's constitutional rights to due process, to a fair and full hearing, and an unbiased judge and grossly abused his discretion in awarding attorney fees.

15. Trial Court erred in his failure to acknowledge his bias in favor of the appellee and appellee's counsel who is /also counsel for the trial court and this court.

16. Trial Court erred in awarding the untimely application for attorney fees contrary to rules of procedure.

17. The state's judicial process and rules of procedure to do not provide fair procedures in matters of judicial disqualification and are unconstitutional denying access to the courts.

(Roberta Ann Funnell)
ROBERTA ANN FUNNELL, pro se

APPENDIX C

MOTION TO STAY, January 4, 1989 ..... 1c

AMENDMENT, MOTION TO STAY, January 6, 1989 ... 2c

REQUEST, RULE 15B, RE-PRESENT MOTION FOR TRIAL JUDGE DISQUALIFICATION, December 27, 1988 ..... 4c

MOTION, DISQUALIFICATION, December 9, 1988 ... 13c

SUPPLEMENT, REHEARING REQUEST, TRIAL JUDGE DISQUALIFICATION, VENUE CHANGE, October 12, 1988 ..... 18c

REHEARING REQUEST, TRIAL JUDGE DISQUALIFICATION, VENUE CHANGE, August 11, 1988 ..... 21c

MOTION, TRIAL JUDGE DISQUALIFICATION, VENUE CHANGE, EXHIBITS, JULY 24, 1988 ..... 36c

APPLICATION, SUPREME COURT 71726 STAY DISTRICT COURT PROCEEDINGS, November 28, 1988 ..... 56c

PETITION FOR REHEARING, November 21, 1988 .... 60c

PETITION, PROHIBITION/MANDAMUS, ORIGINAL JURISDICTION APPLICATION, September 16, 1988 ..... 67c

MARTIN RESPONSE TO REHEARING REQUEST, TRIAL JUDGE DISQUALIFICATION, VENUE CHANGE, August 26, 1988 ..... 80c

AFFIDAVIT, July 5, 1988 ..... 81c

MARTIN RESPONSES TO INTERROGATORIES AND ADMISSIONS, FILED MAY 26, 1988 - NOT SERVED 86c

PETITION AND EXHIBITS, May 15, 1987 ..... 89c

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

Filed in the District Court January 4, 1989.

ROBERTA ANN FUNNELL,	)
Plaintiff,	)
-vs-	)No. CJ-87-5512
JAMES. FUNNELL, etc. et al.,	)
Defendants.	)

MOTION TO STAY

COMES NOW plaintiff and respectfully moves the Court to say the effectiveness of the money judgment awarded December 19, 1988, pending appeal, and for good cause show the Court as follows:

1. Plaintiff was under undue hardship during the holiday season to obtain information as business and law libraries hours were limited.

2. Plaintiff inquired extensively regarding obtaining a supersedeas bond only to learn that very few bonding companies could provide such a bond and required that court papers as to said judgment be provided. The minute was insufficient to determine the amount of the judgment. Plaintiff did not receive the proposed journal entry until 5 p.m. December 28, 1988, and has no funds to post collateral to court.

3. Plaintiff did not learn until the date of this filing that the bonding companies also require that plaintiff be represented by a lawyer whose firm had done substantial business with the bonding company. Plaintiff has had to appear pro se due to multiple conflicts of interest of the numerous counsel consulted, and to date has no lawyer.

4. Plaintiff is and has been under undue hardships due to suffering multiple car accident injuries and inability to earn income. She also helps provide for her aunt for whom she is the legal guardian in an effort to prevent the aunt from becoming institutionalized and a burden to the taxpayers. Plaintiff also is responsible for extra expenses of her paralyzed mother.

5. The Court in rendering its decision failed to take into consideration the comparative wealth of plaintiff and the State of Oklahoma, and that in such cases in federal court the United States

is not awarded attorney fees, or that plaintiff was denied constitutional rights.

6. Rule 1.13 of Rules of Appellate Procedure in Civil Cases states that the time limit under said rule may be extended by the trial court for good cause shown and that a motion to stay may be considered and ruled upon after the petition in error has been filed in the appeal court.

WHEREFORE plaintiff Roberta Ann Funnell prays the Court in the interest of justice and fair play to stay the effectiveness of its decision rendered December 19, 1988, a money judgment in favor of the office of the Attorney General, State of Oklahoma, pending appeal.

Respectfully submitted,

(Roberta Ann Funnell)
ROBERTA ANN FUNNELL,

Copy certified by District Court Clerk

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was mailed to the counsel of record and to Honorable Glenn Dale Carter, Pottawatomie County Courthouse, Shawnee, Ok 74801 on this 4th day of January, 1989.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Filed in District Court January 6, 1989.

ROBERTA ANN FUNNELL,	)	
Plaintiff,	)	
-vs-	)	CJ-87-5512
JAMES D. FUNNELL, etc. et al.,	)	
Defendants.	)	

AMENDMENT TO MOTION TO STAY

Plaintiff amends her Motion to Stay filed January 4, 1989, to add verification and the following paragraph number seven (7):

7. This motion to stay effectiveness of the money judgment awarded December 19, 1988, 1988, may be granted under 12 O.S. 974, see ***Mapco, Inc. v. Means***, Okl., 538 P.2d 593.at 595 [2] and 596 [8].

VERIFICATION

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

I, Roberta Ann Funnell, of lawful age being first duly sworn upon oath state that I have read the Motion to Stay filed herein and the facts set forth therein are true and correct.

(Roberta Ann Funnell)
ROBERTA ANN FUNNELL

Subscribed and sworn to before me this 6th day of January, 1989.

(Debra D. Smith)
NOTARY PUBLIC
My commission expires:
(2 - 12 - 1989)

Respectfully submitted,

(Roberta Ann Funnell)
ROBERTA ANN FUNNELL, *pro se*
2306 S.E. 49th ST., #124
Oklahoma City, OK 73129
(405)670-1943

Copy certified by District Court Clerk.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing was placed in the U.S. mails, potage prepaid on December 6, 1989, addressed to the counsel of record and hand delivered to the Honorable Glenn Dale Carter, Pottawatomie County Courthouse, Shawnee, Ok.

(Roberta Ann Funnell)
ROBERTA ANN FUNNELL

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Filed in District Court December 27, 1988.

ROBERTA ANN FUNNELL,	)	
Plaintiff,	)	
-vs-	)	CJ-87-5512
JAMES D. FUNNELL and HARRIET	)	
HUNT FUNNELL, Individually, as	)	
Co-Executors of the Estate of	)	
JOSEPH W. FUNNELL, Deceased and as	)	
Co-Trustees of JOSEPH W. FUNNELL	)	
Irrevocable Trusts, Their Agents,	)	
JONATHAN W. BURCH, ARNOLD D.	)	
FAGIN, STEPHEN JONES, RONALD R.	)	
HUDSON AND CHARLES F. ALDEN III,	)	
Individually and HOLLOWAY, DOBSON,	)	
HUDSON & BACHMAN, a Professional	)	
corporation, and ROBERT MARTIN,	)	
Defendants.	)	

PLAINTIFF'S REQUEST/UNDER RULE *15*B. TO RE-PRESENT HER MOTION FOR CERTIFICATION OF DISQUALIFICATION BY ASSIGNED TRIAL JUDGE TO A SECOND JUDGE TO BE ASSIGNED BY THE SUPREME COURT UNDER RULE *9*(b) OF RULES FOR THE ADMINISTRATION OF COURTS

Plaintiff respectfully requests the Presiding Judge of Oklahoma County to refer the Supreme Court the matter of Plaintiff's Request under Rule 15 b. of Rules for the District Courts of Oklahoma to re-present her Motion for Certification of Disqualification by Assigned Trial Judge to a second judge and shows the Court as follows:

1. the assigned trial judge, Honorable Glenn Dale Carter overruled and denied Plaintiff's said Motion on December 19, 1988. This request is timely filed as the Court Clerk's office was not open on Monday, December 26, 1989, and in accordance with 12 O.S. 2006 A.

2. Rule 15 b. provides that an aggrieved party may re-present a denied motion to disqualify to the Chief Judge of the county in which the matter is pending, or if the disqualification of the Chief Judge is sought, to the Presiding Judge of the administrative district. The intent of the Rule is for a second judge to re-hear such a motion.

3. In the interest of judicial economy plaintiff has not directly sought the disqualification of the December and January designated Chief Judges, Honorables Thomas Smith and Leemon Freeman. She has stated in her affidavit she believes they are disqualified as employers of a defendant, Robert Martin, Court Administrator along with the Presiding Judge, Arthur Lory Rakestraw, who is alleged to be a co-conspirator in this action. Previously Honorable William Saied had held that all 7th District Judges were disqualified and Honorable Bryan Dixon specifically recused based on Martin being a party. By copy of this request to Chief Judge Smith and designated Chief Judge Leemon Freeman plaintiff requests that if they believe they are not disqualified to so advise plaintiff for a hearing.

4. In the alternative plaintiff requests the Presiding Judge to request the Supreme Court of Oklahoma to designate a judge to rehear plaintiff's motion as would be in keeping with the intent of Rule 9 (f) of Rules for the Administration of Courts. Said Rule 9 (f) provides that where the Chief Judge and Presiding Judge are both disqualified the Chief Justice is the select another judicial officer.

Respectfully submitted,

(Roberta Ann Funnell

Roberta Ann Funnell, pro se

2306 S.E. 49th St., #124
Oklahoma City, OK 73129
(405 670-1943

CERTIFICATE OF MAILING AND SERVICE

I hereby certify that a true and correct copy of the above request and attached affidavits of plaintiff and courtroom observers was mailed to all counsel of record, to Honorable Glenn Dale Carte, Pottawatomie County Courthouse, Shawnee, OK 74801 with a second copy to be mailed by the Oklahoma County Court Clerk, and hand delivered to Honorable Thomas Smith, December Chief Judge, and Honorable Leemon Freeman, January Chief Judge, and to Presiding Judge Arthur Lory Rakestraw, all on this 27th day of December, 1988.

(Roberta Ann Funnell)
Roberta Ann Funnell

Copy certified by District Court Clerk.

AFFIDAVIT

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

Roberta Ann Funnell of legal age and first being duly sworn upon oath, deposes and states the following is made on her personal knowledge, that she is the plaintiff is case CJ-87-5512 filed in Oklahoma County, State of Oklahoma, and that she is the Petitioner in case no. 71726, an action for writs of mandamus and prohibition pending in the Supreme Court of Oklahoma by Petition for Rehearing. Affiant further states as follows:

1. hereby adopt my prior affidavits filed herein.

2. In accordance with Rule 15 a., I hand delivered a copy of my motion for certification of disqualification by assigned trial judge to the office of assigned Judge Glenn Dale Carter in the Pottawatomie County Courthouse, Shawnee, Oklahoma. Said copy was accepted by court employee Christine Perryman and receipt

acknowledge on another copy, which is attached hereto, and made a part of this affidavit.

3. As set forth in the Certificate of Mailing and Service I gave the Oklahoma County Court Clerk deputy another copy to mail to Judge Carter per his request to have a copy of all filings mailed to him. I observed the deputy writing Judge Carter's address.

4. At the hearing n December 19, 1988, Judge Carter claimed he never saw my motion and called for the presentation of motion for attorney fees by the attorney general's office, which was represented by attorney James Franks identified as the chief of the Tort and Contract Litigation Division. Franks claimed he was appearing for the first time..

5. Earlier that day I had telephoned the office of the Attorney to complain that Franks' division had acted contrary to the Code of Professional Responsibility. Although I was assured that I would be contacted regarding the conduct, I was not called.

6. With reference to paragraph 4 ***supra*** I objected and handed the court reporter the attached copy of my motion demonstrating Christine Perryman's signature as having received a copy. Judge Carter flashed an enigmatic look at Franks who claimed that they had not had fifteen days plus three to respond to my motion. Judge Carter declared that my motion was "not ripe" for hearing.

7. I insisted that Judge Carter and Franks were contrary to the statute and rules on disqualification of judges, and were acting to deny my Constitutional rights. After considerable argument Franks offered to allow the presentation of my motion provided the judge heard his motion for fees. I further objected to their 'deal' as denial of my rights. Franks claimed the court was not biased.

8. I have read the attached affidavit of a courtroom observer Donna Gates Meyer and particularly adopt her paragraphs 9 and 10 as to counsel B.J. Cooper and the exchange of letters regarding the winking by Judge Carter at the October 14, 1988, hearing.

9. Counsel Cooper urged Judge Carter to rule that nothing new had transpired which he did and overruled my motion. I again objected to actions of my Constitutional rights being denied if Judge Carter proceeded with the motion on fees as UNDER THE RULE I HAD THE RIGHT TO HAVE MY MOTION REHEARD BY ANOTHER JUDGE and I COULD NOT PARTICIPATE AS TO WHETHER THE FEE MOTION HAD ANY MERITS WITHOUT WAIVING DISQUALIFICATION. THE COURT WAS TOLD THAT I WAS BEING "RUN OVER" AGAIN AS HAD BEEN DONE AT THE AUGUST 4, 1988, HEARING WHEN JUDGE

CARTER SUSTAINED DISPOSITIVE MOTIONS ALTHOUGH I COULD NOT BE IN THE COURTROOM.

10. Counsel Franks stated that conspiracy, misconduct with official records and other unclear matters were alleged against his client, Robert Martin, the Oklahoma County Court Administrator, Franks claimed it was not necessary for Martin to know the allegations as he knew he had "followed procedures of office." When I replied that I could not respond as to the merits of the case, Franks said I was like a "naughty child" who rings a doorbell then runs away.

11. Robert Martin had removed the court files in my cases from the Court Clerk's office and kept them mostly unattended on a shelf in his closet. Some two hundred pages of amended Petitions and supporting documents were removed from the file in case CJ-79-991 against defendant Stephen Jones while Jones was being defended by defendants/counsel herein, Ronald Hudson, Charles Alden and the Holloway firm. Said documents were missing until after that court had sustained a motion for summary judgment in favor of Jones. Martin had continued to remove my files and interfere with court records. I understand he was the chief deputy court clerk before becoming court administrator. Martin's responses to my interrogatories in this case were not timely filed and were placed in the file without docketing until I discovered them. Franks' office failed to serve me with a copy of the response until it was too late for me to file more interrogatories.

12. Judge Carter granted Franks' motion for attorney fees without taking any testimony or proofs of time records or necessity of time spent.

13. I believe Judge Carter's continuing conduct of disregard for my rights and the law and rules for the District Courts is clear indication I cannot get a fair hearing or trial before him.

14. I was advised by the Court clerk of Pottawatomie County that Christine Perryman is an employee in Judge Carter's office and the person to properly accept documents for the judge. Ms. Perryman's office is next to Judge Carter's chambers which are entered through her office.

15. I believe that Judge Carter's claim of never having seen my motion to certify his disqualification is implausible or intentional avoidance in light of paragraphs 2, 3, and 14, ***supra,*** and attached copy of the affidavit by a courtroom observer regarding the winking episode on October 14, 1988.

16. I fear that having to present these reasons for disqualifications will impose a further condition of bias against me.

17. I believe that the Chief Judges for December and January, the Honorable Thomas Smith and Leemon Freeman, respectively, are disqualified to rehear my motion as they employ Robert Martin. Presiding Judge Arthur Lory Rakestraw is disqualified being alleged a co-conspirator in this action as well as an employer in direct relationship with the Court Administrator, defendant Martin. Other judge/employers recused.

Further affiant sayeth not.

(Roberta Ann Funnell
ROBERTA ANN FUNNELL

Subscribed and sworn to before me this 27th day of December, 1988.

(Gerry Wood)
NOTARY PUBLIC

My commission Expires:
6-20-91

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Filed in District Court December 9, 1988

ROBERTA ANN FUNNELL,	)	
Plaintiff,	)	
-vs-	)	87-5512
JAMES D. FUNNELL, et al.,	)	
Defendants.	)	

MOTION OF PLAINTIFF FOR CERTIFICATION OF DISQUALIFICATION BY ASSIGNED TRIAL JUDGE

Plaintiff respectfully moves the Court to certify the Disqualification of the assigned Judge, Honorable Glenn Dale Carter, and for good cause shows the Court as follows:

1. Plaintiff's attached affidavits demonstrate that Judge Carter is biased and prejudiced against her and in favor of the defendants most of whom are attorneys and a court employee who is represented by the Attorney General's office and which he favors.

2. Plaintiff adopts her prior pleadings as to the conduct and prejudice of Judge Carter and adopts her briefs related thereto as though fully set out herein.

3. Judge Carter persists in contacting disqualified judges and the appearance is strongly given that he is prejudiced in favor of Presiding Judge Arthur Lory Rakestraw who is named as a co-conspirator in this action.

WHEREFORE, plaintiff prays the Court to certify its disqualification forth with in the interest and appearance of justice, and respect of the public for the courts.

Respectfully submitted,

(Roberta Ann Funnell)
Roberta Ann Funnell, pro se
2306 S.E. 49th St., #124
Oklahoma City, OK 73129
(405) 670-1943

CERTIFICATE OF MAILING
AND SERVICE ATTACHED WITH AFFIDAVIT

Christine Perryman
12-9-88
8:47 a.m. (Handwritten)

AFFIDAVIT

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

I, Donna Gates Meyer, of lawful age and first and duly sworn upon oath depose and state that the following is made on my personal knowledge and is set forth freely and willingly.

1. I reside at 9700 Lakeland Terrace, Oklahoma City, Oklahoma 73162.

2. I am acquainted with Roberta Ann Funnell through several church and civic organizations. I am concerned about the judicial system and support the idea of observing and reporting on the conduct in court proceedings.

3. I attended a hearing of Mrs. Funnell's case CJ-87-5512 before Judge Glenn Dale Carter on Monday, December 19, 1988 in the Oklahoma County Courthouse.

4. At the beginning of the hearing Judge Carter referred to a letter of November 25, 1988 from Mrs. Funnell and denied her request for his disqualification: he then mentioned a motion for attorney fees.

5. Mrs Funnell objected to said motion as premature as she had a motion for disqualification pending and to further proceed would deny her constitutional rights. Judge Carter claimed he had not seen Mrs. Funnell's motion. Mrs Funnell handed the court reporter a document and stated that it was a copy of the motion with a signature of his employee having received a copy. I later saw the signature on the document when it was retrieved from the court reporter after the hearing.

6. Judge Carter claimed Mrs. Funnell's motion was "not ripe for hearing" and when he moved onto the attorney fee matter, Mrs. Funnell objected again citing the law and the rules. The lawyer from the Attorney General's office, identified as James Franks, had at first said the A.G.'s office had not had 15+3 days to respond to Mrs. Funnell's motion. After Mrs. Funnell cited the law again, Mr. Franks agreed to let her motion be heard if the judge would hear his motion for attorney fees.

7. (a.) When Mrs. Funnell began her presentation the judge, at first, would not look at her, shuffled papers and appeared inattentive. At times the judge noticeably smirked particularly when she said she "believed the judge had predetermined her case."

(b.) The judge rolled his eyes upward, appeared nervous, and with a disgusted look tilted his chair back when Mrs. Funnell said that he had an interest in awarding attorney fees because the Attorney General's office represented him in the Supreme Court in her petition for original jurisdiction.

(c.) Mrs. Funnell spoke about new evidence of prejudice in an affidavit made by a court observer, concerning Judge Carter's

winking in the direction of defendant counsel, Ronald Hudson and his counsel, B.J. Cooper, during the hearing October 14, 1988.

8. Attorney Franks rebuttal was that nothing new had transpired and the court was not biased.

9. Attorney Cooper accused Mrs. Funnell of refusing to abide by the rule of law. He said he had received Mrs. Funnell's letter of October 22, 1988 about the "judge winking" during the October 14th hearing. He said that his patience had reached the breaking point and then he read to the court his response letter dated November 9, but, by mistake, not postmarked until November 22. The letter he read aloud (to the courtroom) sounded intimidating, mentioned prosecution for slander and claimed the "winking" was a lie no matter who was said to have seen this act.

10. Mrs. Funnell's rebuttal read aloud her November 28, reply to Attorney Cooper's letter postmarked November 22. Her letter said that Mr. Cooper "could not have seen everything as he was the acknowledged note-taker in the October 14th hearing." Mrs. Funnell told the court she did not believe Attorney Cooper's letter was misaddressed, as he had claimed, because he had not sent the first envelope inside the second envelope as is customary in the proceedings of law.

11. Judge Carter denied Mrs. Funnell's motion to disqualify himself and stated, at Attorney Cooper's request that nothing new had been presented.

12. Mrs. Funnell repeatedly objected to continuing a hearing on attorney fees and stated her motion should be heard by another judge under the rules, but Judge Carter continued.

13 .Attorney Franks stated that Mrs. Funnell had accused his client, Mr. Martin, Court Administrator, of conspiracy and misconduct with official records. Attorney Franks claimed his client had merely been following procedures of his office and that Mrs. Funnell's case against his client was frivolous as his client had absolute immunity.

14. Mrs. Funnell said she could not argue the merits of the case as she would be waiving the disqualification and that her constitutional rights to a fair trial were being denied.

15. Attorney Franks rebutted saying Mrs. Funnell was like a naughty child who rang the doorbell and ran away.

16. Judge Carter ruled in favor of Attorney Franks and, without requiring any testimony or proof of time spent, awarded $3,977.00 in fees. Attorney Franks was asked to submit a journal entry.

17. Judge Carter asked the attorney identified as Mrs. Peterson about some objections about discovery, to which she replied she did not have a copy. Mrs. Funnell said she did not have a copy either and that the matter should be handled in a pre-trial.

18. Judge Carter mentioned several times about a pre-trial hearing scheduled January 3, 1989 and sounded so zealous about it that I doubt the fairness of such a hearing. From what I have observed I believe Mrs. Funnell can not get a fair hearing.

Further affiant sayeth not.

(Donna Gates Meyer)
Donna Gates Meyer

Subscribed and sworn before me this 27th day of December, 1988.

(Jim Davis)
NOTARY PUBLIC

Commission Expires: 11-30-89

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

Filed in District Court December 9, 1988

ROBERTA ANN FUNNELL,	)	
Plaintiff,	)	
-vs-	)	87-5512
JAMES D. FUNNELL, et al.,	)	
Defendants.	)	

MOTION OF PLAINTIFF FOR CERTIFICATION OF DISQUALIFICATION BY ASSIGNED TRIAL JUDGE

Plaintiff respectfully moves the Court to certify the Disqualification of the assigned Judge, Honorable Glenn Dale Carter, and for good cause shows the Court as follows:

1. Plaintiff's attached affidavits demonstrate that Judge Carter is biased and prejudiced against her and in favor of the defendants

most of whom are attorneys and a court employee who is represented by the Attorney General's office and which he favors.

2. Plaintiff adopts her prior pleadings as to the conduct and prejudice of Judge Carter and adopts her briefs related thereto as though fully set out herein.

3. Judge Carter persists in contacting disqualified judges and the appearance is strongly given that he is prejudiced in favor of Presiding Judge Arthur Lory Rakestraw who is named as a co-conspirator in this action.

WHEREFORE, plaintiff prays the Court to certify its disqualification forth with in the interest and appearance of justice, and respect of the public for the courts.

Respectfully submitted,
(Roberta Ann Funnell)
Roberta Ann Funnell, pro se
2306 S.E. 49th St., #124
Oklahoma City, OK 73129
(405) 670-1943

AFFIDAVIT

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

Roberta Ann Funnell of lawful age and being first duly sworn upon oath deposes and states the following:

1. I am the plaintiff in case CJ-87-5512 filed in Oklahoma County, State of Oklahoma and the Petitioner in case 71726, an action for original jurisdiction pending on Petition for Rehearing in the Supreme Court of Oklahoma with an Application to Stay District Court Proceedings until final determination of said Petition by the state supreme Court or federal proceeding.

2. The Petition for Rehearing relates to my earlier Motion for Certification of Disqualification by Assigned Trial Judge, Glenn Dale Carter of Pottawatomie County, Oklahoma, and has the same affidavit attached as that attached hereto of a courtroom observer relating the conduct of Judge Carter on the 14th day of October, 1988.

3. Judge Carter was observed winking in the direction of Ronald Hudson, a defendant and counsel for defendants James and Harriet Funnell, and Hudson's counsel, B.J. Cooper who was taking notes of the proceeding to prepare a journal entry. I notified Mr. Cooper of the conduct in a letter dated October 22, 1988. I saw him in his office thereafter and no comment or response was made until after he learned the incident was reported to the Supreme Court. The affiant had been out of state and could not make her affidavit until the time to file the Petition for Rehearing, November 21, 1988.

4. Mr. Cooper's response mentioned prosecution for slander and inferred he represented Judge Carter.

5. On November 25, 1988, I received Mr. Cooper's response and notice that Judge Carter and presiding Arthur Lory Rakestraw had set a hearing for December 19, 1988, for pending motions. The only pending motion being that of the assistant Attorney General, who as counsel for defendant Robert Martin, county Court Administrator, had filed for attorney fees including the action for Judge Carter's disqualification certification. Said counsel had misrepresented Oklahoma law to the Supreme Court and the Court below. She was observed and heard talking with Judge Carter after the hearing on October 14, 1988.

6. On November 25, 1988, I hand delivered a letter to Judge Carter's office in Shawnee reporting that I had heard the profuse expressions of gratitude between he and the assistant attorney general on October 14, 1988, which clearly related to his appreciation of her services in his behalf. Because there is a clear appearance that Judge Carter intends to be vindictive to me and that he is prejudiced, I asked that he certify his disqualification.

7. In my application for Stay of District Court Proceedings I verified that there was an odious appearance of vindictiveness and/or retaliation against me and that I feared further eminent harm for reporting willful misconduct by Judge Carter. I now restate that fear and of Judge Carter biased in favor of counsel for Martin.

8. My original Motion to certify disqualification related my fear that Judge Carter was biased and prejudiced in favor of the defendants who are mostly attorneys and state employee Martin. Judge Carter had held an ex *parte* hearing on April 19, 1988, and set a date for hearing dispositive motions without any regard for discovery needs or my medical problems related to-an auto accident earlier this year. On April 7, 1988, I had informed his bailiff that I

could not appear on April 19, 1988, for medical reasons and was assured that another date would be set. After learning that Judge Carter had been assigned by Chief Justice Doolin, whom I had asked to disqualify, and of the ***ex parte*** hearing I could not participate in any hearing for any continuance without waiving disqualification. Nor could I present argument as to merits of the defendants' various dispositive motions under ***Andrews*** v. ***General Insurance,*** 418 F. Supp. 304.

9. I believe Judge Carter had predetermined how he would rule on dispositive motions as he admitted on August 4, 1988, that he had not seen the files since April 19, 1988. After overruling my motion for Motion for Certification of Disqualification, Judge Carter admitted I had the right to have another judge act on my Motion but at the urging of particularly the Assistant Attorney General, whose office advises and represents members of the judiciary, he proceeded to hear argument from defendants although I advised I could not participate and was suffering from heatstroke, and he granted judgments.

10. I believe Judge Carter and the defendants counsel intended to create more litigation and run up costs which he intends to assess against me out of vindictiveness and bias and prejudice against me in favor of his fellow attorneys. He and Ronald Hudson were both previous assistant district attorneys in Pottawatomie County and have a long standing relationship.

11. I believe that my civil and constitutional rights have been denied me by Judge Carter thus far and that he will continue to do so.

12. I further believe that Judge Carter has demonstrated his bias ad prejudice as I have feared all along. Judge Carter should certify his disqualification before more harm is done to me and to justice.

13. Judge Carter is biased in favor of his wrongdoing fellow judges.

Further affiant sayeth not.

(Roberta Ann Funnell)
ROBERTA ANN FUNNELL

Subscribed and sworn to before me this 8th day of December. 1988.

(Lenee Carpenter)
NOTARY PUBLIC
My Commission Expires:(9-23-89)

Copy certified by District Court Clerk.

AFFIDAVIT

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

I, Shirley Duncan, being of legal age and duly sworn under oath depose and state that the following is made on my personal knowledge and stated freely and willingly:

1. I reside at 501 N. 6th Street, Purcell, Oklahoma 73089.

2. I am acquainted with Roberta Ann Funnell through several boards and church related organizations in Oklahoma, which have a concern regarding the legal/judicial system and support the idea of "Court Watching" to observe and report on conduct in court proceedings.

3. I attended a hearing of Mrs. Funnell's case CJ-87-5512 before Judge Glenn Dale Carter, on Friday, October 14, 1988, at 1:30 p.m.

4. Over Mrs. Funnell's objection Judge Carter required her to represent her motions to certify his disqualifications. After calling on her to rebut the lawyers' arguments, Judge Carter winked at the lawyers sitting away from the counsel table in chairs just in front and right of me. Said lawyers had been identified as B.J. Cooper and Ronald Hudson. Judge Carter's expression appeared to ridicule Mrs. Funnell.

5. Later Judge Carter kept asking one of the women lawyers named Peterson to present her motions as though prompting or reminding her. The other woman lawyer identified as Dabney spoke with Judge Carter after the hearing recessed for the second time.

Further affiant sayeth not!

(Shirley Duncan)
SHIRLEY DUNCAN

Subscribed and sworn to before me this 21st day of November, 1988

(Angela Hunnell)
NOTARY PUBLIC

My Commission Expires:
01-24-89

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Filed in District Court October 12, 1988.

ROBERTA ANN FUNNELL,	)	
Plaintiff,	)	
-vs-	)	CJ-87-5512
JAMES D. FUNNELL,	)	
etc. et al.,	)	
Defendants.	)	

SUPPLEMENT TO MOTION, AND REQUEST FOR REHEARING MOTION, OF PLAINTIFF FOR CERTIFICATION OF DISQUALIFICATION BY ASSIGNED TRIAL JUDGE AND FOR CHANGE OF VENUE

Plaintiff hereby supplements the Motion of Plaintiff for Certification of Disqualification by Assigned Trial Judge and for Change of Venue filed on July 25, 1988 and the Request for Rehearing said Motion timely filed on August 11, 1988.

I.

The office of the Attorney General of the State of Oklahoma advises the district judges and represents them in various actions. Said office while also acting as counsel for defendant robert Martin misadvised this Court that plaintiff had untimely filed her said Request for Rehearing the Motion of Plaintiff for Certification of Disqualification by Assigned Trial Judge and for Change of Venue in said defendant's Response to plaintiff's Request for Rehearing.

II.

Plaintiff hereby adopts and incorporates her Objection to Defendant Robert Martin's Response to Plaintiff's Request for Rehearing filed August 30, 1988 and her Response to Reply of Defendant Robert Martin filed September 7, 1988. Plaintiff also adopts and incorporates hereto Plaintiff's Request for Extension of Time to Respond to Motion for Summary Judgment of Defendant Jonathan W. Burch filed September 19, 1988.

III.

Without any Rehearing of the Motion of Plaintiff for Certification of Disqualification by Assigned Trial Judge and for Change of Venue, contrary to Rule 15 b. of Rules for District Courts of Oklahoma, the Presiding Judge of the Seventh District, Arthur Lory Rakestraw, sent notice on September 7, 1988, of a hearing of "all pending motions in the above mentioned cases"

before the assigned judge, Glenn Dale Carter on Friday, October 14, 1988 at 1:30 p.m., copy attached as Exhibit 3 to the aforesaid Plaintiff's request for Extension of Time.

IV.

Defendant Jonathan W. burch told plaintiff on September 9, 1988, that he had discussed the matter with"the other attorneys" and that HE KNEW PLAINTIFF WOULD BE "FILING ANOTHER LAWSUIT."

V.

Because there is no procedure under said Rule 15 when the Presiding Judge is disqualified or disqualification is sought, Plaintiff had to apply to the Oklahoma Supreme Court for writs of prohibition/mandamus. The Attorney General urged the denial claiming plaintiff had requested the assigned judge to rehear the motion for disqualification, which plaintiff denied and the referee agreed that said Request was not intended to be heard by Judge Carter but that Judge Carter would reconsider his certification of disqualification.

VI.

During the hearing before the referee plaintiff declined to waive her right to a rehearing of her Motion for Certification of Disqualification before a proper court.

VII.

Assigned Judge Carter has demonstrated his bias and prejudice in favor of defendants who are mostly attorneys by granting extensions of time for defendant Jonathan Burch to file dispositive motion but having denied plaintiff extensions of time to respond to other defendants dispositive motions although she had been served documents and was medically
disabled from injuries for which any lawyer would have been granted extensions of time.

VIII.

Judge Carter further demonstrated bias and prejudice by proceeding to hear dispositive motions on August 4, 1988, although knowing plaintiff had the right to a rehearing of her motion, and he was advised that plaintiff could not participate further in the hearing without waiving the disqualification. In her prior case the Oklahoma Supreme Court had ruled that participation by plaintiff had waived disqualification of the assigned judge, citing ***Andrews, Mosburg, Davis, Elam, Legg & Bixler*** v. ***General Insurance Company of America,*** 417 F. Supp. 304 (W.D. Okl. 1976). Plaintiff was denied her state and federal constitutional rights of due process and an unbiased trial judge.

IX.

On October 12, 1988, referee Greg Albert called plaintiff to advise her that morning the Oklahoma Supreme Court had assumed original jurisdiction to deny plaintiff / petitioner's request for disqualification of Chief Justice John B. Doolin and denied the writs of prohibition/mandamus and stay of proceedings in the district court.

X.

Plaintiff reiterated that Presiding Judge Arthur Lory Rakestraw is disqualified to rehear plaintiff's Request for Rehearing due to previous disqualification in plaintiff's cases, being named in this action as a co-conspirator with defendant Jonathan Burch, and as an employer of defendant Robert Martin. **Judge Rakestraw is hereby requested to certify her disqualification, and comply with Rule 9 of Rules of Administration of Courts, as the Chief Judge,** Honorable Jack Purr, was the original district judge to disqualify and recommend disqualification of Oklahoma County Judges in plaintiff's cases.

WHEREFORE, in the interest of judicial economy and justice plaintiff respectfully requests that assigned judge Glenn Dale Carter and Presiding Judge Arthur Lory Rakestraw certify their disqualifications to act in this case so that the matter may be properly heard and resolved.

Respectfully submitted,
(roberta ann funnell
Roberta Ann Funnell, pro se
2306 S.E. 49th St., #124
Oklahoma City, OK 73122
405-670-1943

VERIFICATION

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

I, roberta Ann Funnel, of legal age, being first duly sown upon oath declare that I have read the above and foregoing and the facts contained therein are true and correct.

(Roberta Ann Funnell)
Roberta Ann Funnell

Subscribed and sworn to before me this 13th day of October, 1988.

(Angela Hunnell)
NOTARY PUBLIC

MY COMMISSION EXPIRES;
01-24-89

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Supplement was hand delivered to Honorable Glenn Dale Carter Pottawatomie County Courthouse, Shawnee, OK and to Honorable Arthur Lory Rakestraw, Presiding Judge, Oklahoma County Courthouse, Oklahoma City, Ok 73102, and to all attorneys of record on October 13, 1988.

Roberta Ann Funnell
Roberta Ann Funnell

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Filed in District Court August 11, 1988

ROBERTA ANN FUNNELL, Plaintiff,	)	
vs.	)	CJ-87-5512
JAMES D. FUNNELL, et al., Defendants.	)	

REQUEST FOR REHEARING MOTION OF PLAINTIFF FOR CERTIFICATION OF DISQUALIFICATION BY ASSIGNED TRIAL JUDGE AND FOR CHANGE OF VENUE

COMES NOW, plaintiff, Roberta Ann Funnell, and respectfully requests a re-hearing of her Motion for Certification of Disqualification by Assigned Trial Judge and For Change of Venue, as required under rule 15b. of Rules for the District Courts of Oklahoma before the Supreme Court of Oklahoma will entertain an original proceeding. In support of this request shows the Court as follows:

I.

Plaintiff has attached her affidavit and exhibits, and adopts her brief filed July 25, 1988. Due to the extraordinary abuse of judicial process on August 4, 1988, as set out in the affidavit, the court's attention is called to the fact that a fundamental law of this Republic enjoined upon the legal system the principle of impartiality of the tribunal. ***Tumey v. Ohio***, 273 U.S. 510, 47 S.Ct. 437, 71 L. Ed 749 [1927]; ***Ward v. Village of Monroeville,*** 409 U.S. 57, 93 S. Ct. 80, 34 L. Ed. 2d 267 [1972]; ***Gibson v. Berryhill,*** 411 U.S. 564, 577-579, 93 S. Ct. 1689, 1697-1698. 36 L. Ed.2d 488, 499-500 [1973]; In re Little, 404 U.S. 533, 92 S. Ct. 659, 30 L. Ed 2d 708. If there is the slightest doubt about a judge's state of mind, it must be resolved in favor of the litigant who questions the tribunal's fitness. ***Mayberry v. Pennsylvania,*** 400 U.S. 455, 91 S. Ct. 499, 27 L. Ed 2d 532 [1971]; ***Johnson v. Mississippi,*** 403 U.S. 212, 91 S. Ct. 1778, 29 L. Ed 2d 423 [1971]; ***Taylor v. Hayes,*** 418 U.S. 488, 94 S. Ct. 2697, 41 L. Ed 2d 897 [1974].

II.

The holding of an ***ex parte*** hearing, making orders for filing of dispositive motions without any discovery schedule, proceeding to hearing on motions for summary judgment without reviewing the files in full consideration of all documents before the court, hearing argument only from one side knowing the plaintiff cannot respond or give up her most valuable right to fair trial, mandates the recusal of the assigned judge and voids his acts by the command of the Constitutions, state and federal. Art 2 § 6, Okl Con., U.S.C.A. 5,7, 14 Amend.

III.

Contrary to the concealed Objections by Stephen Jones, Rule 15 a. was followed. A copy of the letter written as an ***in camera*** request is attached as Exhibit 10 of the Motion of Plaintiff for Certification of Disqualification. Said Motion was filed on July 25, 1988, and served to the judge before noon. The rule is that the filing must be made not less than ten days before the trial. In this case the hearing was set for 1:00 P.M., August 4, 1988. Counting backwards and not including August 4, the date July 25th is the proper date for filing the Motion, a Monday. This issue was clearly addressed in ***Equitable General Insurance v. Helm,*** 623 P.2d 365, Ariz. (1981).

WHEREFORE, plaintiff prays the certification of disqualification of the assigned judge and his acts be voided in the interests of justice.

(Roberta Ann Funnell)
ROBERTA ANN FUNNELL, PRO SE
2306 S.E. 49th St. #124
Oklahoma City, OK 73129
(405) 670-1943

Certificate of mailing attached.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing Request for Rehearing of Motion of Plaintiff For Certification of Disqualification By Assigned Trial Judge and for Change of Venue with attached affidavit and exhibits was placed in the U.S. mails on August 11, 1988, addressed to all counsel of record and to the Chief Judge and Presiding Judge of Oklahoma County, Oklahoma County Courthouse, Oklahoma City, Ok 73102, and to Honorable Glenn Dale Carter, Potawattomie County Courthouse, Shawnee, Ok. 74801

(Roberta Ann Funnell)
Roberta Ann Funnell

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

ROBERTA ANN FUNNELL, Plaintiff,	)	
vs.	)	CASE NO. CJ-87-5512
JAMES D. FUNNELL, et al., Defendants.	)	

AFFIDAVIT IN SUPPORT OF REQUEST FOR REHEARING
MOTION OF PLAINTIFF FOR CERTIFICATION OF
DISQUALIFICATION BY ASSIGNED TRIAL
FOR CHANGE OF VENUE

STATE OF OKLAHOMA	)	
	)	SS:
COUNTY OF OKLAHOMA	)	

ROBERTA ANN FUNNELL, of legal age, being by me first duly sworn upon oath, deposes and states that she is the plaintiff named in the above entitled and numbered case, that she is appearing *pro se* and that the facts herein stated are her personal knowledge, and further says:

1. I hereby adopt and incorporate, as though set out word for word, the Affidavit, attached exhibits and Motion of Plaintiff for Certification of Disqualification By Assigned Trial Judge and for Change of Venue filed and served July 25, 1988, the verified Objections of Plaintiff and the attached exhibits served on the Honorable Glenn Dale Carter on May 5, 1988, and filed on May 6, 1988, the verified Motion for Protective Order and the attached exhibits filed May 24, 1988, the Objections to Service of Discovery Requests and Motion for Extension of Time filed May, 27, 1988, and verified with Motion for Extension of Time and attached exhibits filed May 31, 1988, the Affidavit of Plaintiff and attached exhibits filed June 9, 1988, the Affidavit and attached exhibits to Amendment/Supplement to Motion for Protective Order and to Motions for Extensions of Time filed June 16, 1988, the Affidavit and attached exhibits to Motion for Extension of Time to Respond to Defendants' Various Motions filed July 1, 1988, the Affidavit and attached exhibits to Plaintiff's Statement to Controvert Defendant, Robert Martin's Statement of Material Facts Not in Issue filed July 5, 1988, and the exhibits attached to Response of Plaintiff to Motion for Order Compelling Discovery by Defendants Ronald R. Hudson, Charles F. Alden, III, and Holloway, Dobson, Hudson and Bachman, a Professional Corporation filed July 6, 1988. I had adopted and incorporated by reference my prior affidavits and verified pleadings at ¶ 3 of the aforesaid Motion for Certification of Disqualification, etc., filed July 25, 1988. Certificate of service that date with signature of Judge Carter's bailiff is attached hereto as exhibit 1.

2. Said bailiff, Lisa Kingsbury, became very nervous during the time of service and saying that whatever she did was not official, she urged me to take the copy of my Motion to the Court Clerk of Pottawatomie County. The bailiff admitted she had received copies of documents for the Judge in the past and would advise him immediately of my service after it was pointed out that the Court Clerk could not officially receive a copy of a pleading filed in another county.

3. Relying on the usual definition of a bailiff being an officer of the court for the purpose, among other things, of keeping order, on April 7, 1988, I had relied on Lisa Kingsbury's statement that she

would advise Judge Carter that I could not attend a hearing scheduled for April 19, 1988, due to medical reasons and that Judge Carter would get in touch with me to set a new date. Lisa sounded very assured of her role at that time. I understood I would receive something in writing.

4. On August 4, 1988, at the hearing on my Motion for Certification of Disqualification, Judge Carter stated that bailiffs don't grant or deny continuances and don't commit judges to ***ex parte*** conversations. At no time have I indicated a desire for an ***ex parte*** contact.

5. August 3, 1988, defendant Stephen Jones had filed Objection to my Motion for Certification of Disqualification by Assigned Trial Judge. I have never received any copy of said document and learned of it on August 8, 1988. Said objection claimed ***inter alia*** that there had been no request for continuance and that I had not complied with rule 15, which requires an ***in camera*** request for the judge to disqualify and not less than ten days before the case is set for trial to file a motion to disqualify a judge and deliver a copy to the judge. Jones did not state how supposedly the rule was not complied with nor was it mentioned in his presentation orally to the Court. I had no knowledge of the above claims nor the opportunity to rebut.

6. I believe that Jones' counsel delivered a copy of the Objection to Judge Carter prior to the hearing. Judge Carter and I arrived at the courtroom at the same time, and he went into chambers to which the attorneys have access. Jones' counsel was among the first of the others to arrive. After noticing Judge Carter's court reporter the judge brought with him, said counsel left with materials in hand. Judge Carter later stated that no application for continuance was submitted as to the April 19, 1988, hearing. He had held same without my knowledge for which I later vigorously objected as a denial of my constitutional right to be present and heard, particularly as no discovery schedule was considered.

7. I also objected to the assignment of Judge Carter by Chief Justice, Honorable John Doolin. I had by letters requested his disqualification based on bias and prejudice in favor of attorneys and against ***pro se*** litigants. Judge Carter stated on August 4, 1988, that the appropriateness of his appointment would be dealt with by the Chief Justice.

8. On August 4, 1988, Judge Carter first asked if the April 19 hearing had been journalized and was told that all counsel for parties except me had approved it and it had been sent to the judge. The journal entry had not been previously filed although written and served the end of April, 1988.

9. During oral argument in response to my Motion for Certification of disqualification, counsel for the defendant Arnold Fagin stated that the Judge did not have an understanding at the April hearing that it was to have been reset and that it was my misunderstanding.

10. Counsel for defendant Robert Martin, County Court Administrator, identified herself as being from the Attorney General's office. She stated that there was no indication that my presence would have been helpful at the April hearing. I believe her remarks unduly influenced the Judge, were intended to do so, and made spitefully.

11. I responded that my constitutional rights were denied and that I feared not getting a fair trial.

12. In addition to the aforesaid remarks by Judge Carter he said there had been no *ex parte* communication, that he had telephoned but did not talk to Judge Saied and talked with a "representative" of Judge Saied, and that he talked to "clerical people" of Judge Saied. Judge Carter then denied my Motion and immediately asked what had been filed. He said he had asked to have the files but had not received copies of pleadings since the April hearing.

13. I objected stating I would appeal and would have to leave the courtroom. I had earlier advised that I was ill having suffered a heatstroke earlier that day. I also stated that I could not participate in further hearing otherwise I would be recognizing the jurisdiction.

14. Martin's counsel stated she had filed a motion for summary Judgment, that I had filed a statement to controvert and that she assumed I intended that as my response. Most of the counsel acknowledged that I had filed for extension of time. I believe the assistant attorney general's assumption to be unfair as she knew I could not respond. My written response stated I was unable to obtain affidavits.

15. Counsel for Jonathan Burch admitted she did not have any dispositive motion filed and needed to take my deposition. She said she had a motion for sanctions as did counsel for defendant Jones.

16. Judge Carter stated that under the rules I had 5 days to reurge my Motion before the Chief Judge and rather than engage in vain futile act to defer until 5 days then 5 days to the Supreme Court. The judge requested my response. I said I believed the Chief Judge was disqualified. I had earlier noticed that bulletin boards showed the Chief Judge to be the Honorable Richard W. Freemen. I had filed for his disqualification in November 1987 based on his having seen me as a potential client while in private practice. He

had indicated he would accept my cases involving defendants Stephen Jones, James and Harriet Funnell, Jonathan Burch, and Arnold Fagin and offered to look into possible cases against other attorneys, asking me to submit more information. Attorney Freeman later claimed he had a conflict of interest. I believe that if he had a conflict of interest to act as my attorney he would have a conflict to act as judge.

17. The assistant attorney general immediately urged Judge Carter to hear the pending motions followed by the other counsel. I objected to the Appearance of Defendant Ronald Hudson acting as counsel for James and Harriet Funnell and to the appearance of counsel for Stephen Jones. I had filed a Motion for Stay of Proceedings until the two said counsels could prove they could ethically represent their named clients as defendant Hudson had previously acted as counsel for my former attorney, Stephen Jones who had failed to prosecute my actions against James and Harriet Funnell. Jones present counsel had previously represented James in the unprosecuted matters. My Motion had been confessed as said counsel had totally failed to respond. I stated I had filed applications for extension of time but could not present them because I would be negate my Motion for Certification of Disqualification. I reiterated I was ill, having had a heatstroke that day.

18. Judge Carter started hearing the Motion to Dismiss of Defendant Arnold Fagin. I left the courtroom then returned to sit in the spectator area. After the presentation which did not address the fraud by Fagin, Judge Carter noted that I was still in the courtroom and asked for my response. Again I stated that I could not respond because of negating my position on his disqualification. Judge Carter ruled that the plaintiff failing to respond granted the motion.

19. Judge Carter then proceeded to hear defendant Martin's motion for summary judgment. I left the courtroom as I believed it was Judge Carter's and the assistant attorney general's intent to goad me into acquiescing my position.

20. Also I had reached the limit of my physical tolerance. Due to extensive muscle inflammation after a car accident I have to take extensive physical therapy which involves heat packs from neck to knees causing considerable loss of body fluids. I had had to take more heat by whirlpool and heating pads that morning due to severe muscle spasms and lost more fluids. My medications cause an elevation in blood pressure so was advised to be on a salt-free diet. This combination resulted in a heatstroke. I had to have a woman companion support me upon trying to walk to the car after leaving

the courtroom. I believe that any lawyer would have been given consideration for illness and accident.

21. On Friday, August 5, 1988, I telephoned Judge Carter's Court reporter to inquire about a partial transcript and was told I had been "put on a list" that it would take 5 to 6 months as she was far behind. I stated the judge should have left well enough alone and allowed an Oklahoma County reporter to take the record. I believe Judge Carter used his own reporter so as to control the transcript. Lawyers have told me they believe a visiting judge using his own reporter is also wanting to control what the transcript says.

22. I believe that my fears as to the bias and prejudice of Judge Carter in favor of attorneys and the statements from the office of the attorney general are borne out by the Judge's conduct on August 4, 1988. I have just received by certified mail from the Attorney General's office a copy of a signed Journal Entry for the April 19, 1988, ***ex parte*** hearing. Attached as Exhibit 2 is a copy of court minute 8-4-88.

23. Attached as Exhibit 3 is a copy of a press clipping stating that Judge Dwain Box had been an Oklahoma County associate district judge in 1969 when all of the Oklahoma County judges were disqualified in my cases. Thus defendant Robert Martin had misrepresented that Judge Box was not around at that time and inexcusable as Martin is a long time Oklahoma Court employee. I am appalled at the role the Attorney General's office has played in this denial of my constitutional rights to recover property damages lost by the lawlessness of the Oklahoma Courts.

24. From the outset the assistant attorney general, Cathy Dabney, attempted to intimidate me to dismiss Martin from the case claiming she knew he was not part of the conspiracy. In November I called her to agree to an extension of time for me to file a Motion to Disqualify Judge Richard Freeman as she had been the only attorney to request time to respond to such motion. She declined saying I must file for an extension of time. I believe she was responsible in good part for the extensive efforts to keep the case before the Oklahoma County judges.

25. I had stated that I would consider dismissing Martin after discovery. Mrs Dabney failed and refused to respond to Requests for Admissions and Interrogatories until after I filed for Protective Order from discovery until after I had recovered sufficiently from a car accident. She then willfully failed to mail a copy to me until it was too late to do follow up Interrogatories. Copy of letter of June 22, 1988, attached as Exhibit 4, which was delayed to include a vitriolic attack on my Motion for Protective Order, Motions for

Extensions of Time, and Supplements and Amendments Thereto. Included in the pleading was an attack on my aforesaid Stay of Proceedings and defense of ALL the defendants who had acted unprofessionally.

26. Most presumptuous of all was the claim, **without having any discovery,** that if my case had even a mere glimmer of merit, one of the many plaintiff's lawyers in this state would be representing me. Lawyers in Oklahoma have a conflict of interest to sue another lawyer as the Oklahoma Bar Association operates its own legal malpractice insurance company. The only lawyer known to me to handle such cases has a conflict to handle my cases and had withdrawn years ago. I have had numerous calls from over the state in recent weeks complaining about the lack of lawyers to handle cases against other lawyers. In my case the defendants are notoriously abusive to other lawyers. I have had several wish me luck but refuse to cope with the nastiness to be expected. Now the Attorney General's office joins the unfair tactics, claiming I had falsely accused the named defendants of wrongful activity. All this was intended to adversely influence the judge.

27. Most cruel was the claim that my physical condition preventing lawfully required compliance with discovery requests is insupportable (sic) "and certainly irrelevant". I am 60 years old and have been in several auto accidents during the pendency of this constitutional rights action. I have to wear what is commonly called a TENS unit for electrical shocks to try to control muscle spasms and pain. If I had been allowed to proceed under a proper discovery schedule and motion schedule the court's time and everyone else's would have been much better served in the interest of justice. Further, the discovery requests had not been lawfully or properly served, which was known to Mrs. Dabney.

28. I was harassed and delayed due to the interference of Judge Joe Cannon who though disqualified twice assigned Oklahoma County judges to hear this case involving their employee, Robert Martin. Attached as Exhibits 5 and 6 are copies of transfer orders from Judge William Saied to Judge Cannon as Presiding Judge who assigned the case to Judge Bryan Dixon who referred it to the Chief Judge, at the time, Leamon Freeman who sent it back to Cannon who then assigned Judge Richard Freeman. Judge Cannon was so determined to try to control the case he wrote the Chief Justice that it should be sent to Oklahoma County judges who had not previously disqualified. The Chief Justice, though asked to disqualify from assignment, secretly assigned the case to Judge

Carter despite the obvious comradery to the office of the Attorney General, Robert Henry, whose name is used prolifically in this case.

29. I believe any of the Seventh District Judges for whom Robert Martin is court administrator is disqualified to act in this matter.

30. I could not file any motion for continuance of the April 19, 1988, hearing after I learned of the aforesaid assignment by the Chief Justice as I would waived disqualification. I believe my Constitutional rights under the Fifth and Fourteenth Amendments of the United Stated Constitution have been violated by denial of an impartial tribunal.

31. Judge Carter sustained motions for summary judgment although he admitted he had not seen the pleadings since April 19, 1988, and despite my being muzzled from making response in my attempt to preserve what I, in good faith, believe is my right to certification of his disqualification. The least Judge Carter could have done was to defer ruling until he had a chance to read the materials filed and discovery done. I believe that the defendants have defrauded the court and it willingly and willfully allowed it. I believe Judge Carter had already decided how he was going to rule in the case which involves fellow judges misconduct and/or abuse, and disregard of procedure particularly where a ***pro se*** litigant is the plaintiff.

32. Defendants James and Harriet Funnell had falsely represented to the court that this case was a refiling, again, of the fraud charges of CJ 71-2464. Defendants Hudson, Alden, Holloway, Dobson, Hudson & Bachman, P.C. falsely claimed that I knew of the fraud alleged in this case prior to January 1983. The fraud related to the trial of CJ-71-2464 occurred in 1984 and the suit was filed in 1985 in federal court. Only the damages resulting from the unlawful dismissal od CJ-71-2464 were requested. Stephen Jones asserts that my complaint involved lawyers and judges only doing their job but it is the manner in which they obtained unlawful dismissals, etc. that is the issue. All of the conduct of the defendants and their counsel is poor representation of fair play and justice.

33. I reiterate that my constitutional and civil rights were violated and continued to be violated.

Further affiant sayeth not.

(Roberta Ann Funnell)
ROBERTA ANN FUNNELL

Subscribed and sworn before me this 11th day of August, 1988.

(Angela Hunnell)
NOTARY PUBLIC

MY COMMISSION EXPIRES:
01-24-89

Copy certified by District Court Clerk.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Motion of Plaintiff for Certification of Disqualification of the assigned Judge, was hand delivered before 12:00 noon on July 25, 1988 to the Honorable Glenn Dale Carter, 301 Pottawatomie County Courthouse, Shawnee, OK, and a true and correct copy was hand delivered or place in the U.S. Mails on July 25, 1988, to all parties or counsel of record.

(Roberta Ann Funnell
ROBERTA ANN FUNNELL

(Copy by Lisa Kingsbury, Bailiff to Judge Carter, on the 25th day of July, 1988, at 11:ar.m.}

(Lisa Humphrey) (handwritten)

Exhibit 1

CLERK'S MINUTES

Visiting Judge Carter, Glenn Dale OKLAHOMA COUNTY 8-4-1988.

CJ-87-87-5512 Roberta Ann Funnell
vs
James D. Funnell, Et al,

Ent: Case comes on for Non Jury Hearing of motions. PlTF. appeared in person Pro-Se. Counsel for Defendants appear as follows: William C. Devinney, Robert C. Smith Jr, G. Peterson, Kathey Dabney (Asst Atty General), Ronald R. Hudson.
Jay Aquaveva

Ent: Mot. for Disqualifiifacation - Denied / Carter
Ent: Mot. to Dismiss as to Def Arnold Fagin -Sust / Carter
Ent: Mot. for Summ Jdgmt. as to James D. & Harriet Funnell- Sust / Carter
Ent: Mot for Summ. Jdgmt. as to Ronald R. Hudson & Law firm of Holloway, Dobson, Hudson & Bachman -Sust / Carter
Ent: Mot. to Dismiss as to Def Steven Jones - Sust / Carter
Ent: Mot. for Sanctions including Dismissal as to Def. Johnathon Burch - Denied / Carter
Ent: Mot. for Summ. Jdmt.as to Def. Robert Martin - Sust / Carter
Ent: Mot for Atty. fees & aghast of all Defs. - Reserved / Carter
Ent: Motions of PlTF. to extend time to respond to Def's Motions - Denied FPP / Carter
Ent: Dis Mot. for protective order - Denied / Carter
Court Reporter - Nancy Butterfield
(Pott. CNTY)

Copy certified by district court clerk.

Exhibit 2

Box, Dwain: See oklahoma PRESS CLIPPING BUREAU, OKLAHOMA CITY, OKLAHOMA
OKLA. CITY TIMES, OKLA. CITY, OKLA (5-5-70)

From the article, *Sooner Capsules*
. . .An Oklahoma County associate district judge today became the first candidate for the newly-created court of appeals. Judge Dwain Box said he will seek election to the appeals court's office No. 5.

The intermediate appeals court was created by the 1968 legislature as a part of the state's reformed court system. A three-judge court will sit in Oklahoma City; another in Tulsa. Except in cases where constitutional questions are raised, the two will be the courts of last resort. . . .

(Irrelevant material deleted)

Exhibit 3

ROBERT H. HENRY
ATTORNEY GENERAL
STATE OF OKLAHOMA

TORT DEFENSE DIVISION
4500 N. Lincoln Boulevard
Lower Level, Suite 102
Oklahoma City, OK
(405)521-4274

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
June 22, 1988.
Ms. Roberta Funnell
2306 S. E. 49th St., #124
Oklahoma City, Oklahoma 73129

Re: ***Funnell vs. Funnell, et al.***, CJ-87-5512, Oklahoma County District Court

Dear Ms. Funnell:

I received your recent pleadings filed in the above-referenced matter as of this date, and was surprised to discover from reference to your attached affidavit that you were not served with our responses to your interrogatories. Please accept my personal apology for this mistake. On the date that these responses were prepared and filed, my regular secretary was out of the office due to the death of her mother.

The substitute secretary took the certificate of mailing directly from your own pleadings, and thereby accidentally omitted your own name from the list. My regular secretary assures me that your name is on the list contained within her permanent certificate for this case, and that you were properly mailed copies of our motion for summary judgment and supporting materials, which were filed subsequently.

Although, from your affidavit, it is clear that you have already seen the responses through the court file, I am enclosing herein a copy of the responses which were filed with the court and which I inadvertently failed to forward to you on that date. Again, I am sorry for this mixup.

Sincerely,

(Cathy Clinton Dabney)

IN THE DISTRICT COURT OF OKLAHOMA COUNTY,
STATE OF OKLAHOMA

Filed in the District Court November 6, 1987.

(FUNNELL)) (pro se)
Plaintiff) Attorneys

vs.) Case No. (CJ-87-5512)

(FUNNELL))(Kathy Dabney et al.)
Defendants Attorneys

TRANSFER ORDER

For good cause shown, the above styled and numbered cause is hereby **TRANSFERRED** TO THE CHIEF JUDGE

Court recuses-named defendant is Bob Martin, Court Administrator)

(Bryan C. Dixon)
TRIAL JUDGE

Said cause is hereby transferred to (R. Freeman) Division and to Judge (Joe Cannon) (By Joe Cannon, Presiding Judge)

(Leamon Freeman)
CHIEF JUDGE

Dated this (6) day of (November) 19(87)

(Material in parenthesis was handwritten).

Copy certified by District Court Clerk

Exhibit 6

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Filed in District Court July 25, 1988.

ROBERTA FUNNELL,)
Plaintiff,)
vs.)
)
JAMES D. FUNNELL,)
et al.,)
Defendants.)

MOTION OF PLAINTIFF FOR CERTIFICATION OF DISQUALIFICATION BY ASSIGNED TRIAL JUDGE AND FOR CHANGE OF VENUE

COMES NOW the plaintiff, Roberta Ann Funnell, and respectfully moves the Court to certify the disqualification of the assigned Judge, the Honorable Glenn Dale Carter, and to remove the above styled and numbered cause from the District Court of Oklahoma County, State of Oklahoma, and for good cause shows the Court as follows:

1. This case alleges conspiracy and deceit by defendants acting in concert with disqualified Oklahoma County District Judges to deny the civil and constitutional rights of plaintiff and includes averments of tampering with court files.

2. Plaintiff's attached affidavit and exhibits set forth the continuing pattern of the activities alleged in this case along with denial of her constitutional rights to notice and due process by the interference of at least one disqualified Oklahoma County Judge with Judge Carter in the setting and holding of a hearing while plaintiff was led to believe that another date would be set. Plaintiff was denied her right to appear and participate in the scheduling of pleadings. No discovery schedule was considered and plaintiff has been unduly harassed, while trying to recover from injuries, by unprofessional conduct.

3. There is a strong appearance of collusion by the disqualified Oklahoma County judge, the assigned Judge and the defendants who have used collusion as an opportunity to run up costs and their fees. As shown in plaintiff's prior affidavits and verified pleadings, adopted and incorporated herein by reference, most of the defendants or their counsel actively participate in

financial support to judges running for office. The case avers fee awards to large campaign contributors.

4. There is a strong appearance that the assigned Judge was appointed by a disqualified Chief Justice due to his bias and prejudice in favor of attorneys and keeping the status quo on their conduct. Due noticed of the appointment was not given.

5. The foregoing gives rise to belief that the assigned Judge is or would be biased and prejudiced in favor of defendants who are mostly attorneys and keeping the status quo on their conduct. Due notice of the appointment was not given.

6. There is a strong belief and appearance that the assigned Judge wold be or has been unduly influenced by the office of the Attorney General which has acted to defend all of the defendants even including the federal court clerks.

7. It is evident there have been ***ex parte*** communications and an ***ex parte*** hearing was conducted by the assigned judge contrary to Judicial Code and constitutional rights to due process for plaintiff.

8. Plaintiff's adopted affidavits and pleadings, and defendant Robert Martin's admission along with the attached affidavit indicate that the court records are not safe in the Oklahoma County courthouse as to plaintiff's cases. A change of venue is demanded in the interest of justice.

WHEREFORE, plaintiff, Roberta Ann Funnell, prays the Court to certify its disqualification and that a change of venue be imposed.

(Roberta Ann Funnell
Roberta Ann Funnell, pro se
2306 S. E. 49th St., #124
Oklahoma City, OK 73129
(405) 670-1941

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Motion of Plaintiff for Certification of Disqualification of the assigned Judge, was hand delivered before 12:00 noon on July 25, 1988 to the Honorable Glenn Dale Carter, 301 Pottawatomie County Courthouse, Shawnee, OK, and a true and correct copy was hand delivered or placed in the U.S. mails on July 25, 1988, to all parties or counsel of record.

Roberta Ann Funnell
ROBERTA ANN FUNNELL

Copy received by Lisa Kingsbury, Bailiff to Judge Carter, on the 25th day of July, 1988, at 11:45 A.M.
Lisa Kingsbury

AFFIDAVIT

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

ROBERTA ANN FUNNELL, of legal age, being by me first duly sworn upon oath, deposes and states that the following statements are made on her personal knowledge, that she is the plaintiff in case CJ-87-5512 in Oklahoma County District Court State of Oklahoma. She further states as follows:

1. This affidavit is made in support of a Motion of Plaintiff for Certification of Disqualification by Assigned Trial Judge and for Change of Venue.

2. I fear that I will be unable to obtain a fair and impartial trial before the assigned judge, Honorable Glenn Dale Carter, who is from Shawnee, Oklahoma in Pottawatomie County adjoining Oklahoma County, due in part to the interference by disqualified Oklahoma County judges in contact with Judge Carter. Also Judge Carter was assigned by Chief Justice, Honorable John Doolin, who, having previously demonstrated bias and prejudice as set out below, was asked to disqualify but concealed his assignment of Judge Carter by failure to notify the Oklahoma County Court Clerk. I believe Justice Doolin improperly assigned Judge Carter under the Oklahoma Statutes and Rules for Administration of Courts.

3. Judge Carter never notified the said Court Clerk nor me of his assignment and did not indicate to same any desire for any hearing. Instead the Honorable William Saied, although disqualified to act, sent a notice of a hearing to Judge Carter, myself and counsel for defendants, copy attached as Exhibit 1. Said action was taken within a few days after it became known I has been injured in a car accident. I believe Judge Saied's action was taken at the urging of certain defendants and/or counsel for same, one of whom is a court employee, defendant Robert Martin. Reportedly Judge Saied retired as of July 1.

4. I did not learn that Justice Doolin had assigned Judge Carter until after I had notified the latter on April 7, 1988, that due to medical reasons I was unable to attend the scheduled hearing, copy of letter attached as Exhibit 2. I was told by telephone to Judge Carter's office that he would be in contact with me to set a new date for hearing. I learned on May 2, 1988, that a hearing had been held without notifying me. On May 5, 1988, my Objections of Plaintiff filed May 6, 1988, was hand delivered to Judge Carter. A copy of same was hand delivered to Justice Doolin with a letter of objection, copy attached as Exhibit 3. I received no response nor any relief and defendants began a campaign of harassment, including failure and refusal to send me copies of their motions, as set forth in my verified pleadings and affidavits.

5. My physical condition seriously deteriorated due to the efforts of having to respond to Oklahoma Supreme Court demands and the premature filings of the defendants. This case is a refiling of part of the allegations of federal case CIV 85-1489-A as to conspiracy to deny my civil constitutional rights with defendant Martin added along with further acts of deceit by defendants. Said case is on appeal as to whether my dismissal was made with or without prejudice and involves questions as to Federal Rules of Civil Procedure. Due to lack of relief from the federal appeal court within two years of their acts of fraud, the federal Court Clerk, Robert Dennis, and deputy Court Clerk, Terri Dismukes, were served with summons issued May 16, 1988. Physician's statements attached hereto as Exhibits 4 and 5.

6. Defendant Martin's counsel, Cathy Dabney, advised me in September, 1987, that the other defendants had desired to transfer this case to federal court but that she had rejected the plan claiming that Martin was not subject to federal jurisdiction despite no discovery being had.

7. By a copy of a letter to Judge Carter from counsel for defendant Jonathan Burch, copy attached as Exhibit 6, I learned that the Oklahoma County Court Clerk still had not been notified of the assignment of Judge Carter and that it was apparent that counsel for Burch had reason to believe that Judge Carter was receiving some copies of pleadings filed in Oklahoma County or had *ex parte* notice of same. Other than the Court Clerk, there was no one properly qualified to have been in contact with Judge Carter as the District Court Administrator, Robert Martin, was a defendant against whom it was alleged he had been interfering with my court files and records.

8. On June 2, 1988, I had learned that Defendant Martin had belatedly filed responses to my First Interrogatories and first Requests for Admissions, that the May 26, 1988 filing date was obliterated and the filing was not entered on the court docket. Certified copy of the docket computer printout before the discovery attached as Exhibit 7 and copy of the docket printout after discovery and entry attached as Exhibit 8. Martin's counsel had knowingly deleted my name from the service list, copy of certificate of mailing attached as Exhibit 9. June 16, 1988, I wrote Judge Carter requesting his certification of disqualification and mentioned the foregoing as part of the reasons I would be filing for a Change of Venue due to the interference in the Oklahoma County Courthouse, copy of letter attached as Exhibit 10. No response has been received. I believe that Judge Carter notified Justice Doolin of my letter. On June 21, 1988, with four justices disqualifying, the Supreme Court including Justice Doolin, denied my petition for rehearing of Supreme Court No. 62,658 consolidated with 62,186, which as case CJ-71-2464 in Oklahoma County had been unlawfully dismissed and was the basis for this action originally. The Supreme Court Memorandum Opinion had totally disregarded my proposition that there had been no compliance as to the required pretrial conference to exchange documents and witnesses. Said Court had totally disregarded the fact that demurrers were sustained to the Fifth Amended Petition so the lower court's ruling was not ion compliance with said Court's mandate as to the Fourth Amende Petition appealed earlier and that I had filed a Sixth Amended Petition prior to the lower court having called the Fifth Amended Petition to trial improperly after changing its earlier demurrer orders without notice to me. I believe the Oklahoma Courts' actions are part of a general bias and prejudice against pro se litigants set out below.

10. On June 27, 1988, I receive a copy of that aforementioned response of defendant Martin, paragraph 8. The mailing included a sweeping defense of all the defendants including objections to my Motion for Stay of Proceedings until counsel had formerly been with the law firm that h ad represented defendant James Funnel in CJ-71-2464, which case I had hired Jones to prosecute for me. Also, the Motion for Stay included a request that defendants Ronald Hudson, Charles F. Alden and Holloway, Dobson, Hudson & Bachman should prove t hey could ethically represent James and Harriet Funnell in this suit in which they are witness and defendants. Hudson, et al. had also represented defendants Arnold Fagin and Jonathan Burch in CJ-71-2464 and represented Jones in

my case CJ-79-991 against him for ***inter alia*** failure to prosecute CJ-71-2464 and quitting without leave of the court. Counsel for Jones, James and Harriet Funnell made no response to my Motion for Stay of Proceedings, apparently relying on the response of defendant Martin's counsel.

11. On July 5, 1988, I filed a statement to demonstrate that defendant Martin had not been acting in good faith and was indeed part of the alleged conspiracy of ***inter alia*** disqualified Oklahoma County judges with defendants to deny my constitutional rights. I delivered a copy of said statement and the over-reaching defense of all defendants by defendant Martin to the office of Attorney General Robert Henry. I objected to the use of that office's name and that of Robert Henry to defend probate attorneys and citizens as well as unduly influence Judge Carter by claiming there was no merit to may action, although Martin's counsel had not done discovery. Mr. Henry is from Shawnee, Oklahoma nd the son of a highly respected judge who retired from there. I understand that Judge Carter may have replace Judge Henry. I was assured that Mr. Robert Henry was distressed and I would be contacted by the chief of the tort defense division of the Attorney General's office after July 14, 1988. This did not occur although I waited, out of respect for Mr. Robert Henry, until the 'last minute' to file this. I believe that Judge Carter is and/or would be biased in favor of any statement from the office of Attorney General Robert Henry. There is an odious appearance of a state employee attempting to curry favor for/which several private law firms.

12. On July 20, 1988, I discovered one of my pleadings filed in early July was missing from the court file and deleted from the docket on computer. I believe it is imperative that there be a change of venue so that the court file can be moved out of the jurisdiction of Oklahoma County judges and the defendant Court Administrator, Robert Martin, who was the former deputy court clerk with many old loyalties. Over the years hundreds of court documents including a deposition have "disappeared" from the court files of my cases. Robert Martin has admitted removing the files to h is office closet in the past. This case alleges that defendant Hudson removed files from the courthouse and documents were altered.

13. I have just learned that defendant Ronald Hudson was a long time member of the Pottawatomie Count Bar and I believe that Judge Carter would thus be well acquainted with Hudson and biased in his favor.

14. As to the aforementioned bias and prejudice of Chief Justice Doolin, he has most recently demonstrated that by his sole dissent as to the adoption of the Oklahoma Model Rules of Professional Conduct, copy of Order of March 10, 122988, attached as Exhibit 11. I and others had been prodding the Bar Association and the Supreme Court to upgrade the said Rules after the American Bar adopted its Model rules reportedly in November, 12986, the Supreme Court with Justice Doolin as Chief Justice beginning January 1987, failed to act for over a year. The proposed Rules had been published in the September 6, 1986 Oklahoma Bar Journal. .

15. Justice Doolin authored the opinion in my case against Stephen Jones in which he ambiguously held a pro se litigant to "the standards of an attorney" complaining about my pleadings yet choosing to ignore the amended pleadings, made after pleadings yet choosing to ignore the amended pleadings, made after obtaining some reliable legal advice, stating concealment of documents and information for ten years by my former attorneys. The presumptuous penciled notations hat I knew of the fraudulent acts are on the record of CJ-79-991. While said case was on appeal as consolidated Supreme Court number 59,204, Justice Doolin would position himself in the capitol cafeteria so he could over-hear my conversations with other pro se litigants who were having problems with judges and justices abusing their rights. It was obvious from Justice Doolin's scowls and facial expressions he disapproved of pro ses' positions. Members of the Supreme Court have been antagonistic toward me because of my activities as a legal consumer advocate and my requests for accountability by the legal and judicial systems as an advisor board member of an organization of Americans for Legal Reform, and as the President of an education investigative "People's Lobby." This antagonism has been fanned by some of my former counsel/attorneys who have misquoted me and attacked me in print and in private.

16. There has been the appearance of a "pipeline' between the office of the Chief Justice and my former attorneys or their counsel. After Justice Doolin became Chief Justice in 1987, my Petition for Rehearing of No. 59,204 was denied on March 3, 1987, 17 months after its timely filing. On May 26, 1987, the Oklahoma Supreme Court corrected its Order immediately after the defendants had received notice that I had applied to the U.S. Supreme Court for an Extension of Time to file for a Writ of Certiorari. Justice Doolin did not order the Oklahoma County Court Clerk to forward the

record in my case CJ-71-2464, Supreme Court 62, 658 consoli'ated with 62,186, until the day after denial of my aforesaid Petition for Rehearing, Copy of Order of March 4, 1987 attached as Exhibit 12. My petition to consolidate case 59,204 with 62,658 had been denied although most of the defendant attorneys had relied on the alleged ability of still receiving my judgment through CJ-71-2464 as the basis of no damages by them. Justice Doolin had been advised that defendant Stephen Jones' claims in 59,204 were different than his affidavit filed in CJ-71-2464. Copy of Order of October 5, 1984 attached as Exhibit 13.

17. I believe that my Constitutional rights have been repeatedly denied me. I fear the appointment of any trial judge by an disqualified judge or justice, and which appointment is contrary to Rule 9 (e-g) of Rules on Administration of Courts.

FURTHER AFFIANT SAYETH NOT!

(Roberta Ann Funnell
ROBERTA ANN FUNNELL

SUBSCRIBED AND SWORN TO BEFORE ME THIS (25) DAY OF JULY, 1988.

MY COMMISSION EXPIRES: (01-24-87) (Angela Hunnell)
NOTARY PUBLIC

Copy certified by District Court Clerk.

DISTRICT COURT
SEVENTH JUDICIAL DISTRICT, STATE OF OKLAHOMA
OKLAHOMA AND CANADIAN COUNTIES
OKLAHOMA CITY, OKLAHOMA 73102

William R.Saied
District Judge

March 18, 1988

CJ-87-5512
ROBERTA ANN FUNNELL vs JAMES D. FUNNELL, ET AL

TO WHOM IT MAY CONCERN:

This is to you that the above mentioned case is set for a Status Conference before Judge Glenn Dale Carter, on Tuesday, April 19, 1988, at 9:00 a.m., in courtroom 520 at the Oklahoma County Courthouse.

(William R. Saied)
WILLIAM R. SAIED
PRESIDING JUDGE
SEVENTH JUDICIAL DISTRICT

cc: Judge Glenn Dale Carter
Roberta Ann Funnell
B. J. Cooper
Kathy Dabney
Georgiana Peterson
Robert C. Smith,Jr.
Earl D. Mills
Reggie Whitten
Tom L. King
Edward Ray

Exhibit 1

April 7, 1988

The Honorable Glenn Dale Carter
301 Pottawatomie County Courthouse
Shawnee, OK 74801

Re: CJ-87-5512
ROBERTA ANN FUNNELL vs. JAMES D. FUNNELL, et al.
Letter Honorable William Saied, March 18, 1988

Dear Judge Carter:

The above letter gave notice of setting the above case for Status Conference on Tuesday, April 19, 1988, in the Oklahoma County Courthouse.

This is to confirm my telephone conversation with Lisa in your office this morning to advise that for medical reasons I cannot attend. Attached are copies of notes from my orthopedic surgeon who was not available today to give a written update. By telephone he had advised me last week that the re-examination of March 28, 1988, by a "bone scan" had revealed several rib fractures undetected heretofore by x-ray, and also revealed additional knee problems. Despite wearing the advised knee and rib constrictors yesterday, the injuries were increased and aggravated by law library work, so that

my doctor's office advised very limited and conservative activities for the coming weeks as we are trying to avoid surgery.

Thank you for your attention.

Sincerely,

Roberta Ann Funnell, plaintiff pro se
2306 S.E. 49th St., #124
Oklahoma City, OK 73129
cc: B. J. Cooper, Kathy Dabney, Georgiana Peterson and Tom L. King, Robert C. Smith, Jr. Earl D. Mills and Reggie Whitten, Ronald Hudson, Court Clerk Oklahoma County, Judge William Saied.

Exhibit 2 on 2

February 29, 1988

RE: ROBERTA ANN FUNNELL
DIAGNOSIS: OSTEOARTHRITIS & TENDINITIS, LEFT KNEE:
FRACTURED RIB

TO WHOM IT MAY CONCERN;

The above named patient was reevaluated by me today in my office for the above medical problem. It is my medical opinion this patient may be released to return to XXXXXXX/LIGHT DUTY on 2-29-88.

RESTRICTIONS: NON REACHING ABOVE THE SHOULDER DUE TO HER FRACTURED RIB: NO CLIMBING OR GOING UP AND WON STAIR BECAUSE OF HER KNEE, FOR ONE MONTH.

NEXT APPOINTMENT: ONE MONTH March 28 10:00 a.m.

Very truly yours,

(Thomas H. Flesher, III, M.D.
(Diplomate American Board of Orthopedic Surgery)
3301 Northwest 50th Street, Oklahoma City, Oklahoma 73112

March 4, 1988

RE: ROBERTA FUNNELL

DIAGNOSIS; Marked osteoarthritis of her patellofemoral joint, left knee; tendinitis, left knee.

TO WHOM IT MAY CONCERN:

I am treating Ms. Funnell for the above stated condition. It is my medical opinion her walking should be strictly limited for the next month to simple daily activities and going to and from physical therapy for whirlpool.

Very Truly yours,

(Thomas H. Flesher, III, M.D.)
(Diplomate American Board of Orthopedic Surgery)
3301 Northwest 50th Street, Oklahoma City, Oklahoma 73112-5680

May 5, 1988

Honorable John B. Doolin, Chief Justice
Supreme Court of Oklahoma
Oklahoma City, OK 73105

RE: Assignment of Honorable Glenn Dale Carter to CJ-87-5512 in Oklahoma County

Dear Justice Doolin:

Enclosed is a copy of Objections of Plaintiff in the above cause which chronologically sets forth the activities regarding the above assignment. I particularly object to the concealment of the assignment until after the injudicious Memorandum Opinion rendered in appeal number 62,658 consolidated with number 62, 186. The interference by the disqualified Oklahoma County judges is odious- setting the hearing before a Petition for Rehearing could even be filed. Again the "pipeline' to your office is apparent.

For the hearing to take place without plaintiff's knowledge and while she was medically incapacitated due to accident injuries is reprehensible, particularly when told she would be contacted.

The bottom line is that the judicial system in this state has perjured itself by breaching their oaths to uphold the laws and Constitution. Is this the kind of publicity you desire: I can assure you the public is outraged at the lawlessness of the judiciary. A concerned citizens group has just been formed.

DIAGNOSIS; Marked osteoarthritis of her patellofemoral joint, left knee; tendinitis, left knee.

TO WHOM IT MAY CONCERN:

I am treating Ms. Funnell for the above stated condition. It is my medical opinion her walking should be strictly limited for the next month to simple daily activities and going to and from physical therapy for whirlpool.

Very Truly yours,

(Thomas H. Flesher, III, M.D.)
(Diplomate American Board of Orthopedic Surgery)
3301 Northwest 50th Street, Oklahoma City, Oklahoma 73112-5680

May 5, 1988

Honorable John B. Doolin, Chief Justice
Supreme Court of Oklahoma
Oklahoma City, OK 73105

RE: Assignment of Honorable Glenn Dale Carter to CJ-87-5512 in Oklahoma County

Dear Justice Doolin:

Enclosed is a copy of Objections of Plaintiff in the above cause which chronologically sets forth the activities regarding the above assignment. I particularly object to the concealment of the assignment until after the injudicious Memorandum Opinion rendered in appeal number 62,658 consolidated with number 62, 186. The interference by the disqualified Oklahoma County judges is odious- setting the hearing before a Petition for Rehearing could even be filed. Again the "pipeline' to your office is apparent.

For the hearing to take place without plaintiff's knowledge and whiie she was medically incapacitated due to accident injuries is reprehensible, particularly when told she would be contacted.

The bottom line is that the judicial system in this state has perjured itself by breaching their oaths to uphold the laws and Constitution. Is this the kind of publicity you desire: I can assure you the public is outraged at the lawlessness of the judiciary. A concerned citizens group has just been formed.

I will again call your ATTENTION TO THE REQUIRED "appearance of Justice" and respectfully request that you disqualify yourself and the Vice Chief Justice also disqualify. His "sitting on" the recommended removal of Judge Joe Cannon indicates this Court's continuing protection of those it is Constitutionally required to discipline in the interest of the public. An Order should issue that the Oklahoma County Judges be restrained from contacting any assigned Judge.

Sincerely,

(Roberta Ann Funnell)

Roberta Ann Funnell
2306 S.E. 49th St. #124
Oklahoma City, OK 73129
(405) 670-1943)

cc: Honorable Glenn Dale Carter, B.J. Cooper, Robert C. Smith, Jr., Tom L. King, Kathey Dabney, Reggie Whitten, Ronald Hudson

Exhibit 3

April 11, 1988

RE: ROBERTA FUNNELL

DIAGNOSIS: Osteoarthritis & tendinitis, left knee; fractured ribs.

TO WHOM ITS MAY CONCERN:

The above named patient is currently under my care for the above stated diagnoses. She receive these injuries in a car wreck. Reevaluation and diagnostic testing have revealed the need for her to remain at complete rest for the next month. She should be up only to attend whirlpool. She is also restricted form reaching, lifting and excessive walking.

Very truly yours,

(Thomas H. Flesher, III, M.D.)
(Diplomate American Board of Orthopedic Surgery)
3301 Northwest 50th Street Oklahoma City, Oklahoma 73112-5680

June 20, 1988

RE: ROBERTA FUNNELL

TO WHOM IT MAY CONCERN:

The above named patient of mine is being treated by me for myofascitis which effects her upper back, both shoulders, both arms and both hands. This condition makes it very difficult for her to sit or stand for any length of time. She also cannot grasp with either hand, nor can she perform fine manipulations tasks. She is currently undergoing physical therapy for this condition and is to be with a TENS unit.

Also, this patient is being treated by me for her left knee with a diagnosis of tendinitis and possible chondromalacia. This condition is worsening, so I am referring her to Dr. Ralph Payne, an associate of mine, for a second opinion.

Very truly yours,

(Thomas H. Flesher, III)
Thomas H. Flesher III, M.D.
(Diplomate American Board of Orthopedic Surgery)
3301 Northwest 50th Street Oklahoma City, Oklahoma 73112-5680

Exhibit 4

June 14, 1988

TO WHOM IT MAY CONCERN:

Re: Roberta Ann Funnell

I have examined and treated the above named patient for injuries reportedly sustained in an auto accident. The patient has pain in the left side of her neck and shoulder, radiating to her hand.

Neurological tests demonstrate a diminished strength of wrist extensor and flexor muscles suggesting a neuropathy of 7th cervical and 1st dorsal nerves.

This pathology would cause problems with activity that requires wrist and finger action such as typing and sorting notes.

Sincerely,

Glenn V. Watson, D. C., 3715 N. Kickapoo, Shawnee, OK 74801
GVW/ms

Exhibit 5

June 14, 1988

The Honorable Glenn Dale Carter
District Court Judge
Pottawatomie County Courthouse
Shawnee, Oklahoma 74801

RE: Funnell v. Funnell, et al
Case No. CJ-87-5512

Dear Judge Carter:

As you are probably aware, I filed a Motion for Sanctions on June 7, 1988 in this case. The court clerk has set it for hearing on August 5, 1988 at 10:00 a.m. before Judge Cannon, which I believe is incorrect. I would appreciate very much your letting me know a convenient time for hearing on this motion and I will inform all other counsel and Ms. Funnell. Defendant Jonathan Burch would also be willing for this motion to be decided on the briefs.

Thank you very much for your cooperation in this matter.

Very truly yours,

KING, ROBERTS & BEELER

GEORGIANA PETERSON

GP/mb

cc: Mr. Reggie Whitten, Mr. Ronald R. Hudson, Mr. William C. Devinney, Ms. Cathy Dabney, Ms. Roberta Ann Funnell

Exhibit 6

CIVIL ACTION DOCKET

CIVIL

DIV D-13-HON. J. CANNON
05/15/87 CJ-OK-87-005512

PLAINTIFF/ATTORNEY	DEFENDANT/ATTORNEY
FUNNELL ROBERTA ANN	FUNNELL JAMES D ET AL
** NO ATTORNEY OF RECORD**	ET AL
	NO ATTORNEY

MAY 31 88	MOTION FOR EXTENSION OF TIME
MAY 31 88	DF STEPHEN JONES MOT 4 FEE OR IN ALTERN MOT TO DISMISS/CANNON/6-17, 10 AM,
MAY 27 88	LETTER FILED MILLS. WHITTEN. MILLS, MILLS & HINKLE
MAY 27 88	MOT FOR EXTEN OF TIME
MAY 27 88	AMDED CERTIFICATE OF SERV OF MOT FOR PROTECT ORDER
MAY 27 88	AMENDED CERTIFICATE OF SERVICE OF MOT TO QUASH NOTICE OF DEPOSITION
MAY 25 88	DF STEPHEN JONE'S OBJECTION TO PL MOTION FOR PROTECTIVE ORDER
MAY 24 88	MOTION TO QUASH NOTICE OF DEPOSITION.
MAY 24 88	MOTION FOR PROTECTIVE ORDER

Certified copy signed by district court clerk.

Exhibit 7

CIVIL ACTION DOCKET

CIVIL

DIV D-13-HON. J. CANNON
05/15/87 CJ-OK-87-005512

PLAINTIFF/ATTORNEY	DEFENDANT/ATTORNEY
FUNNELL ROBERTA ANN	FUNNELL JAMES D ET AL
** NO ATTORNEY OF RECORD**	ET AL
	NO ATTORNEY

MAY 31 88	MOTION FOR EXTENSION OF TIME

MAY 31 88	DF STEPHEN JONES MOT 4 FEE OR IN ALTERN MOT TO DISMISS/CANNON/6-17, 10 AM
MAY 27 88	LETTER FILED MILLS. WHITTEN. MILLS, MILLS & HINKLE
MAY 27 88	MOT FOR EXTEN OF TIME
MAY 27 88	AMDED CERTIFICATE OF SERV OF MOT FOR PROTECT ORDER
MAY 27 88	AMENDED CERTIFICATE OF SERVICE OF MOT TO QUASH NOTICE OF DEPOSITION
MAY 26 88	DEFT. ROBERT MARTIN'S RESP TO PLT'S 1ST INTERROG 1ST REQUEST 4 ADMISSIONS
MAY 25 88	df stephen jone's objection to pl motion for protective order
MAY 24 88	MOTION TO QUASH NOTICE OF DEPOSITION.
MAY 24 88	MOTION FOR PROTECTIVE ORDER

Certified copy signed by district court clerk.

Exhibit 8

CERTIFICATE OF MAILING

On this 26th day of May, 1988, a true and correct copy of the foregoing was mailed, postage prepaid, to:

Mr. Robert C. Smith
First National Center West
Oklahoma City, OK 73102

Mr. B. J. Cooper
P.O. Box 1336
Oklahoma City, OK 73101

Mr. Ronald Hudson
Suite 900
211 N. Robinson
Oklahoma City, Ok 73102

Mr. Reggie Whitten
Suite 810
211 N. Robinson

Oklahoma City, OK 73102

Mr. Tom King
15 North Robinson
Suite 600
Oklahoma City, OK 73102

(Cathy Clinton Dabney)
CATHY CLINTON DABNEY

Exhibit 9

June 16, 1988

Honorable Glenn Dale Carter
301 Pottawatomie County Courthouse
Shawnee, OK 74801

Re: Funnell vs. Funnell, et al., Case No. CJ-87-5512

Dear Judge Carter:

This is written as an in camera request, as required under Rule 15 a. of Rules for the District Courts of Oklahoma, for your certification of disqualification in this matter. You have had my Objections filed May 6, 1988, hand delivered to you, and are aware that I vigorously objected to the interference by disqualified Oklahoma County judges and particularly to your holding an ex parte hearing. The secrecy of your assignment by the Chief Justice whom I believe is disqualified only adds to the gross appearance of lack of justice.

Canon 3 A. (4) of the Code of Judicial Conduct requires that ex parte communications should not be initiated. Because this serious breach occurred there has been a series of unlawful occurrences relating to the defendants and their counsel which have been set forth in part in my Motion for Protective Order filed May 24, 1988, Motions for Extension of Time filed May 27 and 31, 1988, and Affidavit filed June 9, 1988. Today I filed an Amendment/Supplement to Motion for Protective Order and to Motions for Extension of Time noting at least three known instances of filings by defendants of which I was never advised BY

THEM. I have given evidence to the Oklahoma County Court Clerk of at least one document in behalf of Robert Martin, Court Administrator, that was file stamped,slipped into the file, and not entered on the docket until it was called to the attention of a clerk. One of the complaints of this lawsuit is the tampering with court files.

The foregoing is mentioned as it will become part of the reason for a Motion for Change of Venue due to interferences at the Oklahoma County Courthouse. This case is out of control. The serious question arises of just what materials have been sent to you? The Court Clerk has never been advised of your role. When defendants file motions they are set before Judge Cannon who has notoriously interfered. Contrarily I have always been asked if my motions are to be set for hearing. Who is sending copies of filings to you?

page 2- Honorable Glenn Dale Carter, June 16, 1988.

I have just received a misaddressed copy of a letter of June 14, 1988, to you from Georgiana Peterson counsel for defendant Jonathan Burch in which Ms. Peterson indicates that "you are probably aware, (she) filed a Motion for Sanctions on June 7, 1988 in this case." I have never received any indication from her that she sent such a pleading to you. Nor have I received a copy of her Application for Extension of Time Which to File Dispositive Motions filed June, 2, 1988 according to the computor print out. Why would Ms. Peterson indicate that you have been made aware of her Motion for Sanctions? This indicates more ex parte contacts which was the reason for this lawsuit.

You have obviously had ex parte contacts with the Oklahoma County judges who have more than passing interest in then outcome of this case. An encounter with Judge William Saied last Friday clearly indicates to me there is an active interest, which I have every reason to believe has been communicated to you by them.

I regret having to write this letter to you, however, the required "appearance of justice" just is not present.

Because of the vilifying type of communications to you, that I know of, from defendants Stephen Jones and Ronald Hudson, counsel B.J. Cooper and Ms. Peterson, I want you to know that Ms. Peterson's claims in her Motion for Sanctions and those of Stephen Jones were denied and disputed by exhibits and affidavits of parties

other than myself. My legal ward and I have been harassed, our dog drugged and improper entry using false representations was made into our premises. My ward has become so upset that I am having to seek other shelter for her at least until this mobile home community can get a security system using remote TV. This was decided by them after the unfortunate drugging of the dog. My recovery from accident injuries has been impaired seriously. Your local Dr. Glenn Watson indicates that I now have nerve damage from having to deal with the problems arising directly due to failure to allow me my rights to be heard regarding scheduling of procedures and to hear the no doubt false claims of defendants as to the real status of the case and rebut.

I am not sending any copies of pleadings as I consider that you are disqualified to act in this case. Thank you for your attention.
(Roberta Ann Funnell)
Roberta Ann Funnell, pro se, 2306 S.E.49th St., #124, Okla. City, Ok 73126
RAF/SD
cc: all counsel of record

Exhibit 10 on 2

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE ADOPTION OF	)	
THE OKLAHOMA MODEL RULES OF	)	S.C.B.D. 3490
PROFESSIONAL CONDUCT	)	

ORDER

On application of the Oklahoma Bar Association for adoption of the Oklahoma Model Rules of Professional Conduct, THE COURT FINDS:

(1) A committee of the Oklahoma Bar Association, after a study of three years, submitted for approval the proposed Oklahoma Model Rules of Professional Conduct.

(2) A reprint of the proposed rules appears in the September 6, 1986 issue of the Oklahoma Bar Journal. (Vol. 57, No. 32).
(3) That the proposed Model Rules of Professional Conduct were approved by the Board of Governors and thereafter, on November 21, 1986, the proposed rules approved by the House of Delegates with a recommendation to the Oklahoma Supreme Court for approval.
(4) The Court finds the Oklahoma Rules of Professional Conduct should be approved as submitted to replace the existing code of Professional Responsibility.
(5) That the effective date of this order should be made July 1, 1988.

ITS THEREFORE ORDERED the Oklahoma Model Rules of Professional Conduct be and the same is hereby adopted as the standard of conduct of all members of the Oklahoma Bar Association.

IT IS FURTHER ORDERED that the effective date of this order shall be July 1, 1988.

DONE BY ORDER OF THE OKLAHOMA SUPREME COURT IN CONFERENCE on this 10th day of March, 1988.

(Rudolph Hargrave)
VICE CHIEF JUSTICE

Concur: HARGRAVE, V.C.J., HODGES, LAVENDER, SIMMS, WILSON, JJ.
Concur in Part, Dissent in Part: OPALA, KAUGER, SUMMERS, JJ.
Dissent: DOOLIN, C.J.

Exhibit 11

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

The Court Clerk of (Oklahoma County) is directed to forward forthwith to the Clerk of this Court the original record and transcript of the evidence, if any, in the following cases:
(CJ712464)
62,658 cons w/ 62,186 Funnell, v. Funnell et al)

DATED THIS (4TH) OF (MARCH), 1987.

Exhibit 12

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Filed in the Supreme Court October 5, 1984.

62,658 ROBERTA ANN FUNNELL V. HARRIET HUNT FUNNELL ET AL. Appellant's application to consolidate this appeal with previously consolidated appeal number 59,204 is denied.

(Robert Simms)
CHIEF JUSTICE

Exhibit 13

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Filed in the Supreme Court of the State of Oklahoma November 28, 1988.

ROBERTA ANN FUNNELL,	)	
	)	
Petitioner,	)	
-vs-	)	CASE NO. 71726
	)	
GLENN DALE CARTER, Judge of the District Court for the Twenty-Third Judicial District assigned to the Seventh Judicial District sitting in Oklahoma County, State of Oklahoma, and ARTHUR LORY RAKESTRAW, Presiding Judge Seventh Judicial District,	)	
	)	
Respondents.	)	

APPLICATION TO STAY DISTRICT COURT PROCEEDINGS

Petitioner very respectfully requests this Court to stay the proceedings in case number CJ-87-5512 filed in the District Court of Oklahoma County, State of Oklahoma, until the final determination of Petitioner's Petition for Rehearing and brief thereto by this Court or federal proceeding, if any, as required by federal rules, and shows this Court as follows:

1. It is undisputed fact that Respondent Carter on August 4, 1988. proceeded to hear dispositive motions without reviewing the files and heard argument from only one side knowing petitioner could not respond without waiving said Respondent's disqualification based on the Oklahoma Constitutional grounds of prejudice explicitly stated therein. Nor could Petitioner have requested a continuance without waiving disqualification.

2. It is further undisputed that Petitioner could not learn the name of the new Presiding Judge of the Seventh Judicial District who was disqualified to act having been designated as a co-conspirator in CJ-87-5512 and as an employer of defendant Martin, County Court Administrator, and having been disqualified in prior cases. And under rules legislated by this Court, action by the Presiding Judge was required, the Chief Judges being disqualified as employers of Martin, before this Court would entertain an original proceeding to disqualify a judge.

3. Respondents set a hearing for October 14, 1988, before Respondent Carter and Petitioner applied to this Court for relief. This Court accepted jurisdiction and denied Petitioner's request for writs and her request for stay of proceedings "until final determination of the Supreme Court action."

4. The latter denial indicates that "any reasonable person" would be led to believe that either this Court had made a premature final determination, Petitioner under the rule being allowed a rehearing, or that this Court believed in infallibility of the participating members and its designated referee who had a serious visual problem and did not read the cases presented by the petitioner.

5. Respondent has clearly demonstrated his bias and prejudice in favor of defendant attorneys and court employee and against the Petitioner as set forth in the affidavit attached to Petition for Rehearing. Said affidavit was made as soon as possible after the affiant returned to the state. Respondent Carter's winking in the direction of defendant/counsel during court proceedings can be interpreted as ridicule of Petitioner or a signal of a sly meaning.

Counsel was notified of the act within a few days and made no response until the day he learned the conduct was reported to this Court.

6. The Respondents have again set a hearing before Respondent Carter for December 19, 1988, to hear all pending motions. The only motion pending was a motion for attorney fees by the assistant Attorney General who filed for fees including the matter of said Respondent's disqualification in which said counsel repeatedly misrepresented Oklahoma law to this Court and the court below. Said counsel and Respondent Carter exchanged profuse expressions of gratitude to each other at the end of the hearing on October 14.

7. The foregoing gives an odious appearance of vindictiveness and/or retaliation against Petitioner who fears further eminent harm for reporting willful misconduct of Respondent Carter.

8. Petitioner received notice of the December 19, 1988 hearing on November 25, 1988, and filed this application as soon as possible thereafter. In the interest of justice Petitioner prays this Court to act as expeditiously as possible to stay the district court proceedings.

Respectfully submitted,

(Roberta Ann Funnell)
Roberta Ann Funnell, *pro se*
2306 S.E. 49th St., #124
Oklahoma City, OK 73129
(405) 670-1943

CERTIFICATE OF MAILING ATTACHED

VERIFICATION

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

I, Roberta Ann Funnell, being of lawful age hereby depose and state under oath that I have read the foregoing and that the facts as alleged are true and correct.

(Roberta Ann Funnell)

ROBERTA ANN FUNNELL

Subscribed and sworn before this 28th day of November, 1988.

(Gerry Wood)
NOTARY PUBLIC

My commission expires: 6-20-91

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing application to Stay District Court Proceedings was placed in the US mails, postage prepaid on this 28th day of November, 1988, addressed to: Honorable Glenn Dale Carter, Pottawatomie County Courthouse, Shawnee, OK 74801; HONORABLE ARTHUR LORY RAKESTRAW, Oklahoma County Courthouse, Oklahoma City, OK 73102; Cathy Dabney, 420 West Main, Suite 550, Oklahoma City, OK 73101; B.J. Cooper, P.O. Box 1336, Oklahoma City, OK 73101; Ronald Hudson, Suite 900, 211 N. Robinson, Oklahoma City, OK 73102; Robert C. Smith, 1719 First National Center W, Oklahoma City, OK 72102; Georgiana Peterson, 15 N. Robinson, Suite 600, Oklahoma City, OK 73102; and Reggie Whitten, 211 N. Robinson, Suite 500, Oklahoma City, OK 73102.

(Roberta Ann Funnell)
Roberta Ann Funnell

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

Filed in the Supreme Court November 21, 1988.

ROBERTA ANN FUNNELL,	)	
Petitioner,	)	
vs.	)	71726
GLENN DALE CARTER, Judge of the District	)	
Court for the Twenty-Third Judicial	)	

District assigned to the Seventh Judicial)
District in Oklahoma County, State of)
Oklahoma, and ARTHUR LORY RAKESTRAW,)
Presiding Judge, Seventh Judicial District,)
Respondents.)

PETITION FOR REHEARING

COMES NOW Petitioner and respectfully represents to the Court that on the 12th day of October, 1988, a decision was rendered by five members of the Court which assumed original jurisdiction but denied petition for writs of prohibition/mandamus, denied request for stay, and denied request to disqualify the Chief Justice. However, no action was taken on the Objections of Petitioner and Request for continuance to take Evidence and Testimony of Respondents. The decision was contrary to this Court's Rules, the Constitutions of Oklahoma and the United States of America, Oklahoma Law and the evidence in the case, more particularly set forth hereinafter and in supporting brief.

Petitioner respectfully request the Court for and is entitled to a rehearing and reconsideration and that the Court grant this petitioner the relief prayed for in her Petition for Writs of Prohibition/Mandamus and Amendment thereto, which is to issue Writs of Mandamus and Prohibition to Respondent Carter requiring him to certify his disqualification and declare as void all his acts, and issue Writs of Prohibition and Mandamus to Respondent Rakestraw requiring her to refrain from making any decisions regarding Petitioner's cause as she is and has been disqualified to act, and any further necessary relief.

This Court's decision failed to consider that:

1. The Rules legislated by this Court and its prior procedural decision in Supreme Court case 54,217, resulted in denying a fair trial to Petitioner and created litigation which is contrary to the intent and/or the interest of the people of Oklahoma.

a. Oklahoma Statue, Title 20, section 1403, adopted in 1910 requires that if a judge has not certified his disqualification within three (3) days before a cause is set for trial after application is

filed, then application may be made to this Court, in a civil matter, for mandamus requiring him to do so. The intent of the people through its legislature is that the cause is not be heard until the matter of the prejudice and biased judge is settled. This Court in 1924 vigorously affirmed said intent in ***State ex rep. Garrett*** v. ***Freeman,*** 229 P.296, cited in Petitioner's brief in support of her application.

b. In 1981 this Court promulgated and modified its Rule 15 of Rules for the District Courts of Oklahoma to require that before filing motion to disqualify a judge an ***in camera*** request shall first be made to the judge, then not less than ten (10) days before case set for trial a motion may be filed if not satisfactorily resolved. If the judge refuses to grant the motion then Rule 15 requires that a "written request for re-hearing" the motion be mailed or delivered to the Chief Judge of the county or, if the disqualification of the Chief Judge is sought, to the Presiding Judge of the administrative district within five (5) days from date of refusal. Rule 15 further requires that "If the hearing before the second judge results in an order adverse to the movant, he shall be granted not more than five (5) to institute a proceeding in the Supreme Court or the Court of Criminal Appeals for a Writ of Mandamus. Neither the Supreme Court nor the Court of Criminal Appeals will entertain an original proceeding to disqualify a judge or to direct a judge to transfer a cause to another judge unless it is shown that the relief sought was previously denied by the judge to whom the matter was re-presented in accordance with this rule," Said Rule usurps the legislative authority of the people.

c. .At the urging of the Attorney General's assistant, Respondent Carter abrogated the intent of 20 O.S. 1403 and ***Garrett, supra***. After denying Petitioner's Motion for Certification of Disqualification, Respondent Carter recognized petitioner's right to re-present her motion to another judge under Rule 15 but proceed to hear dispositive motions despite Petitioner's repeated objections that she could not further participate in the hearing as she was ill from heat-stroke ***and further participation would waive any claim of disqualification***. Petitioner's right to due process was maliciously denied at the hearing on April 19, 1988, which petitioner could not attend for medical reasons and on August 4, 1988, when Respondent Carter sustained motions to dismiss and summary judgment knowing Petitioner could not present her responses and that she

had requested extension of time due to auto accident injuries and complications, and lack of document service.

d. Respondent Carter demonstrated his bias and prejudice in favor of defendant attorneys when he proceeded with the *ex parte* hearing on April 19, 1988, set deadlines for dispositive motions and failed to consider discovery needs after petitioner made objections. Respondent further demonstrated bias and prejudice by allowing attorney defendant Burch an extension of time to file a motion for summary judgment but disregarded Petitioner's *supra* requests. His conduct was arbitrary and capricious and contrary to law set forth in supporting brief.

e. Respondent on October 14, 1988 further demonstrated his bias and prejudice by requiring Petitioner to re-present her motion to him rather than to another judge as required under Rule 15, then winking at lawyers when petitioner rose to rebut their argument. The wink was directed toward B. J. Cooper and his client, the defendant Ronald Hudson who also acts as counsel for defendants James and Harriet Funnell. Respondent Carter has been a deputy sheriff, assistant county Attorney and Associate Judge in Pottawatomie County before become County Judge. Hudson had been an assistant county attorney, and was a longtime member of the Pottawatomie County Bar. Respondent succeeded the father of the Attorney General in his position when he became County Judge. Respondent has demonstrated a deference to the Attorney General's assistant who is defending Robert Martin, Oklahoma County Court Administrator . The office of the Attorney General defends the Oklahoma judiciary including the Supreme Court in actions brought against them.

f. With further regard to paragraph "c" *supra*, Petitioner could not participate in the hearing under this Court's own ruling in case 54, 217, which applied the rule under ***Andrews, Mosburg, Elam, Legg & Bixler*** v. ***General Insurance Company of America,*** (W.D. Okl. 1976) 418 F. Supp. 304, that disqualification is waived after participation in a request for a continuance or any hearing. ***Andrews*** was cited in petitioner's brief in support of her application.

g. In the belief that Chief Justice Doolin is disqualified to assign a judge in Petitioner's case relating to attorney misconduct, under ***Andrews*** Petitioner could not request a continuance after learning that despite her request to disqualify, the Chief Justice had appointed Respondent Carter.

h. Respondents' claim that the rulings of August 4, 1988, should have been appealed are contrary to legislative intent and *Garrett, supra,* and the cases cited in same. **Such a posture only increase litigation and renders absurdity to the Chief Justice when he requests the Legislature for more money due to the work load of this Court.** The rule under *Garrett* is that when a judge has been asked to disqualify due to prejudice, which is a constitutional right under the Oklahoma Constitution, Article II, Bill of Rights, Section 6, said judge should not rush through a dismissal of a case with prejudice before this Court has acted under its constitutional duty and plaintiff's statutory right, **and such orders by such judge may be avoided in a mandamus proceeding.** Respondent Carter acted prematurely and invidiously. It can be fairly said he is biased and prejudice in favor of attorneys and the office of the Attorney General. Such bias disqualified him to act. **Petitioner's constitutional rights to a fair trial and due process were denied under state and federal Constitutions and law as set forth in Petitioner's petition and supporting brief thereto and brief hereto.**

i. Rule 15 does not provide for procedure when the Presiding Judge is disqualified. In this instance the Presiding Judge, Respondent Rakestraw was not only an employer of defendant Robert Martin, **she was named a co-conspirator in the action by having issued an *ex parte* order affecting Petitioner's property rights.** Petitioner's "request for re-hearing", stated as required by Rule 15, noted the disqualification of the Chief and Presiding Judges as employers of Martin and/or prior disqualifications to act in Petitioner's cases. It is not the intent of Rule 15 for Respondent Carter to have reheard the motion for certification of disqualification yet this was the procedure urged by Respondents who appeared to have conspired to set a hearing so as to rush Petitioner and this Court to some decision before October 14, 1988, the date respondents set for "hearing all .pending motions", Exhibit B-1 to petition. **The assistant Attorney General had invidiously urged that Petitioner had not timely filed her request for re-hearing. This was contrary to law and fact. Said counsel continues to misrepresent the law contrary to oath of office.** This Court should take judicial notice that the assistant Attorney General has just filed a motion to be paid up to $120.00 an hour for nefarious activities. **This is an outrage that should shock the conscience of this Court in light of its having encumbered Petitioner from presenting her defenses to motions for dismissal and summary judgment by its decision in case**

54,217 and then denying Petitioner's request for relief herein. The Respondents, the Attorney General's office and this Court would make a mockery, winking at justice as literally done by Respondent Carter. See attached Affidavits.

j. Due to concealment and/or failure to properly inform the Oklahoma County Court Clerk by the Court Administrator's office, Petitioner did not and could not learn that Respondent Rakestraw had become Presiding Judge prior to the hearing on August 4, 1988. Her notice of the October 14, 1988 hearing was dated just one day after the expiration of any possible appeal time, which gives validity to suspicion of conspiracy by Respondents and their advisors with defendants.

k. Rule 39 of the rules of the Supreme Court of Oklahoma states that on any controverted question of fact, this Court will refer the cause to a referee for the purpose of taking testimony or hear evidence, as it shall determine. However, when petitioner requested to take the testimony of Respondents, Referee Wayne Snow stated that was not possible, although it was a defendant's attorney who raised the issue that no testimony had been taken of Respondents. Such a toothless rule is misleading to the people and non-lawyer legislators.

l. On October 3, 1988, Petitioner filed Objections to certificates of services of responses by defendants Stephen Jones and Robert Martin misstating actual service date. Particularly the response for Martin by the assistant Attorney General was delayed so that Petitioner had no time to prepare oral rebuttal to the numerous inapplicable issues and cases presented. The Referee stated that under Rule 37 Petitioner could not respond to the assistant Attorney General's response. This posture is an unconscionable denial of due process particularly when this Court imposes the duty on Petitioner to show right to writs. Such posture allowed misrepresentations and irrelevance in behalf of the Respondents. Unless Respondent Carter is removed from hearing the district court case, this Court would allow the winking Respondent, contrary to the interests of justice, to rule on awarding fees for a matter that benefitted said Respondent, thus setting off even more litigation contrary to the interests of the people of Oklahoma.

m. This Court failed to address the possible procedure when the Presiding Judge of an administrative district is disqualified to act under Rule 15, thus requiring at another time that issue again be litigated, again contrary to the interests of the people as to costs.

n. The evidence and exhibits to Petitioner's application demonstrate this Court's disregard for its own rules. Particularly exhibit O demonstrates the refusal to even address the noncompliance with Rule 5 on pretrial proceedings in appeal number 62,658 consolidated with 62,186. Said appeal related to the case underlying the district court action here for denial of constitutional rights and fraud.

o. There is a pattern of disregard for this Court's own prior rulings which has adversely affected the economy of Oklahoma as well as this Petitioner. She is reliably informed that several businesses have refused to establish in this state due to the inconsistencies of this Court's rulings and the conduct of state attorneys and judges that this Court allows.

Wherefore, premises considered, Petitioner prays that a rehearing reconsideration of her Petition be had, and that this Court grant the Petitioner the relief prayed for in her Petition.

Respectfully submitted,

(Roberta Ann Funnell)
Roberta Ann Funnell, pro se

AFFIDAVIT IN SUPPORT OF PETITION FOR REHEARING

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

I, Roberta Ann Funnell, being of lawful age hereby depose and state under oath that I have read the above petition, am knowledgeable of the facts represented therein and that said facts as alleged are true and correct. This affidavit is made in good faith. I am honestly afraid I will not receive fair hearings by Respondents.

(Roberta Ann Funnell)
ROBERTA ANN FUNNELL, pro se

The above affidavit was subscribed and sworn to before me by Roberta Ann Funnell on this sot day of November, 1988.

(Angela Hunnell)
NOTARY PUBLIC

My Commission Expires:01/2/89

AFFIDAVIT

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

I, Shirley Duncan, being of legal age and duly sworn under oath depose and state that the following is made on my personal knowledge and stated freely and willingly:

1. I reside at 501 N. 6th Street, Purcell, Oklahoma 73089.

2. I am acquainted with Roberta Ann Funnell through several boards and church related organizations in Oklahoma, which have a concern regarding the legal/judicial system and support the idea of "Court Watching" to observe and report on conduct in court proceedings.

3. I attended a hearing of Mrs. Funnell's case CJ-87-5512 before Judge Glenn Dale Carter, on Friday, October 14, 1988, at 1:30 p.m.

4. Over Mrs. Funnell's objection Judge Carter required her to represent her motions to certify his disqualifications. After calling on her to rebut the lawyers' arguments, Judge Carter winked at the lawyers sitting away from the counsel table in chairs just in front and right of me. Said lawyers had been identified as B.J. Cooper and Ronald Hudson. Judge Carter's expression appeared to ridicule Mrs. Funnell.

5. Later Judge Carter kept asking one of the women lawyers named Peterson to present her motions as though prompting or reminding her. The other woman lawyer identified as Dabney spoke with Judge Carter after the hearing recessed for the second time.

Further affiant sayeth not!

(Shirley Duncan)
SHIRLEY DUNCAN

Subscribed and sworn to before me this 21st day of November, 1988

(Angela Hunnell)
NOTARY PUBLIC

My Commission Expires:
01-24-89

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Filed in the Supreme Court September 16, 1988.

ROBERTA ANN FUNNELL,	)	
Petitioner,	)	
-vs-	)	No. 71,726
	)	
GLENN DALE CARTER, Judge of the District Court for the Twenty-Third Judicial District assigned to the Seventh Judicial District sitting in Oklahoma County, State of Oklahoma, and ARTHUR LORY RAKESTRAW, Presiding Judge, Seventh Judicial District.	)	
Respondents.	)	

PETITION FOR WRITS OF PROHIBITION/MANDAMUS AND APPLICATION TO ASSUME ORIGINAL JURISDICTION

COMES NOW the Petitioner and respectfully requests for this Court to assume original jurisdiction of her Petition for Writs of Prohibition /Mandamus directed to the Respondents, Glenn Dale Carter, Judge of the District Court of the Twenty-Third District assigned to the Seventh Judicial District sitting in Oklahoma County,

and Arthur Lory Rakestraw, Presiding Judge, Seventh Judicial District and respectfully represents and shows the Court as follows:

I.

The relief sought is against Glenn Dale Carter, Judge of the District Court of the Twenty-Third District, State of Oklahoma, assigned to the Seventh Judicial District sitting in Oklahoma County, and Arthur Lory Rakestraw, Presiding Judge of the Seventh Judicial District, and for this reason, this action is not maintainable in the District Court in Oklahoma or Pottawatomie Counties, and the relief sought is within the superintending control of this Court.

The relief sought is within the authority of this Court Under Article VII, Section Four (4) of the Constitution of the State of Oklahoma which gives this court original jurisdiction to issue Writs of Mandamus and Prohibition and other extraordinary writs with a general superintending control over all inferior courts created by law. State statute, 20 OS. 1403, provides that any party to any cause pending in a court of record may apply to the Supreme Court for mandamus requiring a Judge to certify disqualification.

II.

The Supreme Court of Oklahoma by Rule 15 of the Rules for District Courts of Oklahoma changed the statutory three (3) days limitation for filing a motion to disqualify a judge to ten (10) days before trial if the judge has been requested ***in camera*** to disqualify prior to filing any motion for same. If the judge refuses to grant the motion then , per said rule, the aggrieved party is to re-present the motion to the Chief Judge of the county where cause is pending or, if the disqualification of the Chief Judge is sought, to the Presiding Judge of the administrative district by filing within five (5) days from the date of the refusal a written request for re-hearing. The rule states, "If the hearing ***before the second judge*** results in an order adverse to the movant, he shall be granted not more than five (5) days to institute a proceeding in the Supreme Court . . .for a writ of mandamus. Neither the Supreme Court nor the Court of Criminal Appeals will entertain an original proceeding to disqualify a judge or to direct a judge to transfer a cause to another judge unless it is shown that the relief sought was previously denied by the judge to whom the matter was represented in accordance with this

rule." NO provision is made for the procedure when the Presiding Judge is disqualified except as to the provision stated in Rule 9(e) of the Rules on Administration of Courts that No judicial officer of the district court who, I. is requested to disqualify, II. has disqualified himself, or III. has been order disqualified in a case shall participate in the selection of another judicial officer for assignment to that case.

Section (f) of said Rule 9 provides that when a chief judge is disqualified in a case, within the meaning of subdiv. (e), the presiding judge of the judicial administrative district shall select another judicial officer for assignment to that case. When a presiding judge is disqualified in a case, within the meaning of subdiv. (3), the Chief Justice shall select another judicial officer for assignment to that case.

Section (g) of said Rule 9 provides that neither the Chief Justice nor the Administrative Director of the Court shall participate in the process of selecting a judicial officer for assignment to a case in any court if either by statue or case law he would be disqualified from sitting in that case as judge. NO provision is made for when said parties would be disqualified under the Oklahoma Constitution, Article II. Bill of Rights, Section 6, which provides that, "The courts of justice shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; **and right and justice shall be administered without sale, denial, or prejudice.**" (Emphasis added).

III.

Roberta Ann Funnell, Petitioner, filed case CJ-87-5512 in Oklahoma County, which included complaint that District Judge Arthur Lory Rakestraw awarded approximately $42,000 in attorney fees from the Estate of Joseph W. Funnell Deceased which had an original inventory of only about $24,000.00. It was reported to be depleted and not having assets to pay Petitioner's approximately $16,000.00 judgment for many years prior to attorney fee award. Judge Rakestraw required no accountings or proofs of the legal charges and signed the order ***ex parte*** without notice of hearing to creditors. The largest award went to Judge Rakestraw's biggest campaign contributor who has admitted he did not work for the Estate. Copy of the first page of said Petition and Application and Order for Attorney Fees attached as Exhibits "A" and "B" respectively. Judge Rakestraw was disqualified to act as all the Oklahoma

County Judges had been disqualified, including Judge Rakestraw, and out-of-county judge was assigned to all of Petitioner's cases. Copy of disqualification order by Chief Judge Joe Cannon and Order of Assignment attached as Exhibits "C" and "D" respectively.

IV.

Judge William R. Saied was assigned case CJ-87-5512 when filed and he entered a transfer Order stating "ALL Judges of 7th Jud. District disqualified in all of Plts. Cases." Copy attached as Exhibit "E". Presiding Judge Joe Cannon assigned the case to Judge Bryan Dixon despite the foregoing rules. Judge Dixon disqualified noting a named defendant was "Bob Martin, Court Administrator". The Chief Judge Leamon Freeman sent the Transfer Order to Judge Cannon who assigned the case to Judge Richard Freeman. Copy of Order attached as Exhibit "F". Petitioner objected to Judge Cannon's actions and requested a re-hearing of the disqualification motion. After consulting the "Supreme Court" reportedly, Judge Cannon stated he was advised to send the matter to the Chief Justice. Judge Cannon still tried to keep the case before an Oklahoma County Judge when he wrote to the Chief Justice, Honorable John Doolin, copy attached as Exhibit "G".

Petitioner objected to said letter as misleading and requested the Chief Justice to disqualify, copy of letter attached as Exhibit "H". Petitioner previously suggested that Justice John Doolin should disqualify in the case 59,204 because of having family members financially affected by his decision therein. Petitioner had raised the issue that the Supreme Court had entangled itself with the legal malpractice insurance problems of members of the Oklahoma Bar and had assisted them in setting up their own liability insurance company. Copy of Order to respond to a Bar questionnaire and the published letter from the Bar President attached as Exhibits "I" and "J" respectively. Petitioner had questioned where was all the record in 59,204 consolidated with 59,205 and 59,212, as she found only two boxes when she inventoried the record in the office of the Court Clerk in 1985. Copy of Case Information Sheet showing one box and letter from Court of Appeals stating three boxes were returned to the Supreme Court, attached as Exhibits "K" and "L" respectively. Petitioner was particularly concerned as amended petitions among other important documents had been missing from the court record when the trial court had granted summary judgments to those defendants. Copy of Court Clerk's

statement attached as Exhibit "M". The stated records were missing after the District Court Administrator Robert Martin had removed the files from the Court Clerk's office to a closet in his office. Martin's continuing conduct gave reason for his being a CJ-87-5512 defendant, as set forth in Exhibit "T" *infra*.

Petitioner believed and still believes that Chief Justice Doolin is personally antagonistic toward her as set forth in paragraphs 15-17 of Exhibit "S" *infra* which is incorporated by reference. Petitioner's Amended Petition for Rehearing of Supreme Court case 59,204 was delayed from October 1985 until late February 1987 when "papers mailed to Judges" per docket sheet, copy attached as Exhibit "N". Justice Doolin had been the author of the questioned opinion and became the Chief Justice the first of the year 1987. The same opinion was rendered changing only the cover page and names of purported new participants, disregarding motions for severance.

V.

Chief Justice Doolin did not certify his disqualification and signed an Order assigning Respondent Glenn Dale Carter on 9 December 1987. Neither Petitioner nor the Court Clerk of Oklahoma County were advised of the assignment although it had been past policy to do so. Respondent Carter did not contact the Court Clerk of Oklahoma County. But within days after the defendants in Case CJ-87-5512 and others learned that Petitioner had been injured in a car accident notice of a hearing before Judge Carter was sent out from the office then-Presiding Judge William R. Saied. Copy attached as page ten (10) to Exhibit "P" and dated March 18, 1988 but metered March 22, 1988, during the time petitioner was having to prepare her Petition for Rehearing of Supreme Court case No. 62,658, which was the third appeal of case CJ-71-2464. The wrongful conduct relating to the dismissal of said case was the cause for case CJ-87-5512 along with the aforementioned Order for attorney fees by Respondent Rakestraw, alleged tampering with court files and interference by disqualified Oklahoma County judges.

VI.

Aforesaid Petition for Rehearing 62,658 is attached hereto as Exhibit "O" and sets forth the arbitrary and capricious misconstruction of facts and misapplied irrelevant law with disregard of this Court's own rules and prior decisions. This Court disregarded the necessity for an amended petition which was filed but disregarded

by the trial court which had called for trial of a petition to which demurrers had been sustained. This Court's attention was called to its disregard of State and Federal Constitutions.

VII.

On April 7, 1988, Petitioner called the office of Respondent Carter in Shawnee, Oklahoma to advise the bailiff that Petitioner could not attend the hearing set for April 19, 1988, for medical reasons and was advised that Respondent Carter would get "in touch" to set a new date. Letters confirming Petitioner's medical .problems are attached as Exhibits 2,4,5 of Exhibit "S" and Exhibit "Q". There was no correspondence from Respondent Carter and on April 8, 1988, Petitioner learned that Respondent had been assigned by Chief Justice Doolin. Petitioner was immediately thereafter confined to complete rest for a month and was able only to prepare final page of Admissions and Interrogatories to Robert Martin which had been started in 1987 before her accident. On May 2, 1988, Petitioner learned that contrary to what she had been led to believe by Respondent Carter's office, he had held an ***ex parte*** conference with defendants and set a schedule for ALL motions without regard for need for discovery or Petitioner's rights. The merits of the case were obviously discussed as the Journal Entry refers to dispositive motions. Petitioner filed Objections, Exhibit "P" hereto, with a copy to the Chief Justice with cover letter,, Exhibit three (3) to Exhibit "S", again requesting disqualification.

VIII.

Due to harassing and unprofessional conduct by CJ-87-5512 defendants, which include Petitioner's former attorney, Stephen Jones, she of necessity filed for a Protective Order and for extensions of time. On June 16, 1988, Petitioner filed a Motion and Brief for Stay of Proceedings, Exhibit "R" hereto, until counsel for Stephen Jones and for James and Harriet Funnell, whose counsel was also defendants, could prove they could ethically represent their clients. The same date a letter as expedient ***in camera*** request was sent requesting that respondent Carter certify his disqualifications, copy attached as Exhibit ten (10) to Exhibit "S", which was filed July 25, 1988, after no response from Respondent Carter nor receipt of promised response from the office of the Attorney General, Robert Henry. Petitioner had objected to that office as to its overreaching in the defense of Robert Martin to include private

attorneys and citizens. Mr. Henry is from Shawnee, Oklahoma, and his father had preceded Respondent Carter's position as District Judge. Said Respondent was Associate Judge and County Judge in Shawnee for many years prior. He was also an assistant County Attorney and Deputy Sheriff and would have been closely associated with Judge Henry. Petitioner had just learned that defendant Ronald Hudson was a long time member of the Pottawatomie County Bar, Petitioner believes that Respondent Carter was and is biased and prejudiced in favor of any statement from the office of Attorney General Robert Henry. There is a strong appearance that the Chief Justice was aware of that prejudicial possibility when making the assignment of Respondent Carter. The office of Mr. Henry had made presumptuous conclusions without any discovery as to the merits of Petitioner's case against defendants other than their own client and had made scathing attacks on Petitioner including a claim that if her case had a "glimmer of merit" one of the state's many plaintiff's lawyers would have taken it. Petitioner is appearing pro se.

Attached hereto as Exhibit "U" is an affidavit of a citizen who had been misled apparently by the office of the Attorney General and the Oklahoma Bar Association when trying to inquire about attorney legal malpractice actions, then was "put off" by the Lawyer Referral Center. Petitioner has learned this is a typical pattern in Oklahoma.

IX.

Exhibit "S", the Motion of Plaintiff for Certification of Disqualification by Assigned Trial Judge and for Change of Venue with attached affidavit and Exhibits, all incorporated by reference. Exhibit "T" is Plaintiff's Statement to Controvert Defendant, Robert Martin's Statement of Material Facts Not in Issue, which demonstrates that he was not acting in the good faith required under 51 O.S.§ 152.9, for the Attorney General's office to be representing him. Said office did not investigate thoroughly and further failed to respond to the Petitioner's aforementioned Admissions and Interrogatories until after she filed her aforementioned Protective Order and then failed to serve a copy to Petitioner. Counsel for Martin had called Petitioner in September 1987 claiming that she knew that Martin had acted in good faith within the scope of his duties and attempted to intimidate Petitioner to dismiss Martin from the action. Petitioner suggested that should wait until after discovery had been had.

X.

Paragraph 15 of affidavit to Exhibit "S"" states the antagonism of members of the Supreme Court toward Petitioner because of her activities with an organizations of Americans for Legal Reform and as President of an educational investigative "People's Lobby". As a part of a national day of action by the legal reform group, Petitioner had signed a letter as President of People's Lobby requesting some documents to investigate accountability of the Professional Responsibility Commission of the Oklahoma Bar Association, the "official arm" of the Oklahoma Supreme Court. Copy of news article of July 31, 1988 attached as Exhibit "V". After said article Petitioner was contacted by the affiant of Exhibit "U" along with many others with similar experience.

XI.

On August 4, 1988, as Respondent Carter entered the courtroom he gave Petitioner a look that appeared hostile. He had been served with Exhibit "S" on July 25, 1988, ten days prior. He stated he had not seen the Court files since the April 19, 1988, hearing. After Petitioner was asked to present her Motion as to Disqualification, the assistant attorney general identified herself as such and stated there was no indication that Petitioner's presence would have been helpful at the April hearing. Respondent Carter appeared impressed by that view and Petitioner responded that her ***constitutional rights were denied and she feared not getting a fair trial.*** After denying the motion to certify disqualification Respondent Carter stated that under the rule Petitioner had five days to reurge the Motion and rather than engage in vain and futile act to defer until five then five days to the Supreme Court. The assistant attorney general urged Respondent Carter to hear the pending motions followed by other counsel. Petitioner objected to the appearance of defendant Ronald Hudson as counsel for James and Harriet Funnell and to the appearance of the counsel for Stephen Jones. Petitioner did not argue the merits of her objection or her Motion for Stay of Proceedings, which had been confessed as to the affected attorneys by not responding. The Attorney General's office had included the Stay of Proceedings in their Response filed June 22, 1988. Respondent Carter indicated he was going ahead with the presentation of the defendants dispositive motions without regard for Petitioner's requests for extension of time to respond. Respondent Carter stated he had not seen the court files since April and had needed to know what was filed. He had set the hearing to hear such motions but had

not, as required by Rule 13 and case law, considered all the materials filed by either party. Petitioner's filings had included many item showing the defendants were making misrepresentations to the court. Petitioner advised she could not participate and would have to leave. Respondent Carter invited her to do so as long as she did not disturb the court. Petitioner left the counsel table and the courtroom and immediately returned to observe in the spectator section.

XII.

Respondent Carter noted for the record that Petitioner was in the courtroom and asked for her response to the Motion to Dismiss of defendant Arnold Fagin to which Petitioner had previously responded asking leave to amend to more fully state fraud. Petitioner repeated that she could not participate because of negating her position on his disqualification. Respondent Carter ruled that Petitioner failing to respond granted the motion.

Respondent Carter then proceeded to hear the assistant attorney general on defendant Martin's motion for summary judgment. Petitioner left the courtroom as she believed it was Respondent Carter's and the assistant attorney general's intent to goad her into acquiescing her position. Petitioner had also reached the limit of her physical tolerance having suffered a heatstroke that morning and so advised Respondent Carter. An affidavit of a casual observer to part of the proceedings is attached as Exhibit "W". Defendant Hudson had made a sneering and incorrect statement as to Petitioner's physical problems to which Respondent Carter appeared to be impressed. Petitioner did not attempt to defend or argue the point. Hudson is advertised as being a former county prosecutor and coupled with his long time membership in the Pottawatomie County Bar it appears that Respondent Carter and Hudson were probably well acquainted and had a long-term relationship. Exhibit "Y" is a certified copy of the Clerk Minutes stating the denial of motions of Pltf. (Petitioner) to extend time but no mention as to a motion to extend time to file a dispositive motion by defendant Jonathan Burch.

XIII.

Attached as Exhibit "Z" is a letter to Respondent Carter from the counsel for Defendant Burch indicating an ***ex parte*** allowance of still another period over thirty (30) days in which to file a Motion for Summary Judgment. The inequities and bias are obvious.

XIV.

Exhibit "A-I" is Petitioner's Request for Rehearing Motion of Plaintiff for Certification of Disqualification by Assigned Judge and for Change of Venue, with attached affidavit and exhibits, which are incorporated by reference. The same sets forth the denial of Petitioner's state and federal constitutional rights. Said request was served to Respondent Carter by name with a copy to the Chief Judge and Presiding Judge of Oklahoma County. The Court Clerk's office had no name of any new Presiding Judge after the retirement of Judge Saied. The Court Administrator's office could give no information until after Petitioner had received a notice of a hearing before Respondent Carter copy attached as Exhibit "B-1", bearing the signature of Respondent Rakestraw. Petitioner received said notice late Friday, September 9, 1988. There had been no attempt at any hearing. Petitioner's affidavits had noted the disqualification of any of the Oklahoma County Judges both by prior disqualifications and defendant Martin being an employee.

XV.

Two assistant attorneys general filed a Response to Petitioner's Request for Rehearing which misrepresented the law by statute 12 O.S. 2006 A., as to the time in which to file said Request and misrepresented the law as to presenting evidence at the August 4, 1988 hearing. Under Oklahoma law the Respondent is required to certify his disqualification based upon his personal knowledge and should not take evidence, as more fully set out in Petitioner's Supporting Brief. Copy of the misrepresentation is attached as Exhibit "C-I" hereto. Petitioner's Objection is attached hereto as Exhibit "D-I". The assistant attorney general responded by claiming Petitioner has an "irrational fear of the legal system itself". Petitioner's Response is attached as Exhibit "D-2" hereto, with attached exhibits documenting Petitioner's claims as to the relationship between Respondent Carter and the Attorney General and his father. This longtime small town comradery would indicate Respondent Carter is and was affected prejudicially to Petitioner and his acts have confirmed this position.

XVI.

Petitioner alleges that the action by Respondent Rakestraw was arbitrary and capricious and violative of the procedure set forth or in the alternative she was advised by the Chief Justice to issued the

notice in disregard of Petitioner's rights to a fair tribunal. Petitioner has no adequate remedy by any other method than mandamus and prohibition.

XVII.

Petitioner alleges that the actions of Respondent Carter were fraudulent, invidiously arbitrary and capricious in total disregard of the ***state and federal constitutions*** as to Petitioner's rights as well ass well as being contrary to established law as set forth more fully in Petitioner's brief. Petitioner has no adequate remedy except mandamus.

XVIII.

Petitioner alleges that the actions of the Chief Justice Doolin were fraudulent, invidiously arbitrary and capricious in total disregard of the ***state and federal Constitutions and*** contrary to established law thus rendering him disqualified to act and he should so certify or the other members of this Court should so require.

WHEREFORE, Petitioner prays that this Court assume jurisdiction in this case, issue Writs of Mandamus and Prohibition to the Respondent Carter requiring him to certify his disqualification and declare as void his acts on August 4, 1988, and issue Writs of Prohibition and Mandamus to Respondent Rakestraw requiring her to refrain from making any decisions regarding Petitioner's causes as she is and has been disqualified to act; and that this Court issue such other and further Writs and orders as may be necessary and expedient in the premises, and for such other and further relief as the Court seems just and equitable.

Respectfully submitted,
(Roberta Ann Funnell)
Roberta Ann Funnel, pro se
2306 S.E. 49th St., #124
Oklahoma City, OK 73129
405-67-1943

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

Roberta Ann Funnell, of lawful age, being first duly sworn upon oath, states:

She is the Petitioner above-named; she has read the foregoing Petition for Writs of Mandamus and Application to Assume Jurisdic-

tion and understands the same; and that the facts set forth therein are true and correct.

(Roberta Ann Funnell)
ROBERTA ANN FUNNELL, PETITIONER

Subscribed and sworn to before me this 16th day of September, 1988.

(Angela B. Hummell)
NOTARY PUBLIC

My Commission Expires:

Voluminous exhibits deleted.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Filed in the Supreme Court Sept. 20, 1988

ROBERTA ANN FUNNELL,	)	
Petitioner,	)	
-vs-	)	Case No. 71726
GLENN DALE CARTER, Judge of the	)	
District Court for the twenty-third	)	
Judicial District assigned to the	)	
Seventh Judicial District sitting in	)	
Oklahoma County, State of Oklahoma,	)	
and ARTHUR LORY RAKESTRAW,	)	
Presiding Judge, Seventh Judicial	)	
District,	)	
Respondents.	)	

AMENDMENT TO PETITION FOR WRITS OF PROHIBITION/MANDAMUS AND APPLICATION TO ASSUME ORIGINAL JURISDICTION

COMES NOW Petitioner Roberta Ann Funnell and herewith amends her Petition for Writs of Prohibition/Mandamus and

Application to assume Original Jurisdiction and adds to the paragraphs therein as follows:

Paragraph XIII: Petitioner's Motion for Certification of Disqualification of Respondent Carter stated that he is or would be biased and prejudiced in favor of defendants who are mostly attorneys, and fear of nor having fair trial as Respondent had held a hearing ***ex parte*** with them while Petitioner was led to believe another date would be set.

Paragraph XVII: (Petitioner has no adequate remedy except mandamus) and prohibition.

Prayer for relief: delete "his acts on August 4, 1988", and insert (void) all his acts.

(Roberta Ann Funnell)
ROBERTA ANN FUNNELL
Petitioner ***pro se***
2306 S.E. 49th St., #124
Oklahoma City, OK 73129
405-670-1943

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was hand delivered to the Respondents Glenn Dale Carter and Arthur Lory Rakestraw at their offices in the Pottawatomie Courthouse and Oklahoma County Courthouse, respectively and to all counsel of record. on September 20, 1988. (Roberta Ann Funnell)

Copy certified by District Court Clerk.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Filed in the District Court August 26, 1988.

ROBERTA ANN FUNNELL,)
Plaintiff,)
vs.) No. CJ-87-5512
JAMES D. FUNNELL, et al.,)

Defendants.)

DEFENDANT, ROBERT MARTIN'S RESPONSE TO PLAINTIFF'S REQUEST FOR REHEARING OF MOTION FOR CERTIFICATION OF DISQUALIFICATION AND CHANGE OF VENUE

COMES NOW the Defendant, Robert Martin, for his response to the Plaintiff's request for rehearing of her Motion for Certification of Disqualification and Change of Venue states and alleges as follows:

On August 4, 1988, Judge Glen Dale Carter conducted a hearing in this matter regarding various motions presented by the parties involved. Judge Carter denied the Plaintiff's Motion for Disqualification and ruled on various other motions presented by the Defendants. Upon denying the Plaintiff's Motion for Disqualification, Judge Carter advised the Plaintiff, in open court, that she had five days to re-urge this disqualification with the Chief Judge. Rule 15(b) of the Rules for District Courts of Oklahoma requires that a party that deems itself aggrieved by the refusal of a judge to disqualify may represent his motion to the Chief Judge of the county,, or if the disqualification of the Chief Judge is sought, to the presiding judge of the administrative district, within five days from the date of the refusal to disqualify. The Plaintiff's Request for Rehearing was filed on August 11, 1988. The Plaintiff has wholly failed to comply with the time element of Rule 15(b) and accordingly this Court should deny the Plaintiff's request for rehearing.

At the hearing on August 4, 1988, the Plaintiff was given the opportunity to present argument and any evidence supporting her Motion for Disqualification. The Plaintiff failed to present even a scintilla of evidence supporting her claim that Judge Carter should be disqualified. The Plaintiff's assertions regarding disqualification of Judge Carter, unsupported by an evidence, are insufficient to support a disqualification as a matter of law.

WHEREFORE, the Defendant, Robert Martin, respectfully requests an Order of the Court denying the Plaintiff's request for rehearing.

Respectfully submitted,

ROBERT H. HENRY

ATTORNEY GENERAL OF OKLAHOMA

(Cathy Clinton Dabney)
CATHY CLINTON DABNEY, OBA NO. 2127)
ASSISTANT ATTORNEY GENERAL
DEPUTY CHIEF, TORT DEFENSE DIVISION

(Marc L. Bovos)
MARC L. BOVOS, OBA NO. 12572
ASSISTANT ATTORNEY GENERAL

4500 N. Lincoln Boulevard
Lower Level, Suite 102
Oklahoma City, OK 73105
(405) 521-4274

ATTORNEYS FOR DEFENDANT,
ROBERT MARTIN

Copy certified by District Court Clerk.

FILED IN DISTRICT COURT JULY 5, 1988.

AFFIDAVIT

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

Roberta Ann Funnell, of legal age, being by me first duly sworn upon oath, deposes and states that the following statements are made on her personal knowledge and that she is the plaintiff in case CJ-87-5512 in Oklahoma County District Court, State of Oklahoma, She states further as follows:

1. This affidavit is made in opposition to motion for summary judgment of defendant Robert Martin, County Court Administrator.

2. Martin's response to Plaintiff's Interrogatory No. 1 f. was incomplete. In addition to the nine named judges, the 1978 judges

for District 7 were (10) Honorable William Saied (11) Honorable Stewart Hunter (12) Honorable Floyd Martin (13) Honorable Arthur L. Rakestraw (14) Honorable Joe Cannon, copy of list from Directory of Oklahoma 1979 attached as Exhibit No. 1. All of the District judges disqualified to act in Plaintiff's case CJ-79-991, copy of Order filed June 29, 1979 attached as Exhibit No. 2. Thereafter they disqualified as to plaintiff's other cases, Honorable Merle Lansden was assigned and Robert Martin was aware of his assignment to P-71-232 and CJ-71-2464. Copy of Martin's letter of July 25, 1979, attached as Exhibit No. 3.

3. Martin's response to Plaintiff's Interrogatory No. 2 e. is in bad faith not being in compliance with the instructions as to identification of documents making a vague answer that he "sometimes request in writing the Supreme Court Administrative Office to make an assignment on behalf of the presiding District Court Judge." And "Unknown as to any other documents or writings to this matter."

4. Martin's response denied that he had contact and/or communications with family members, or their agents, of James D. Funnell, Harriet Hunt Funnell, and Joseph W. Funnell, deceased. This is untrue as Harriet Funnell's daughter, then known as Barbara Babcock-Kolliotoulos, also known as Barbara Babcock, was employed in the office of Dan Gray, Court Clerk and for at least one of the judges for several years. She made it well known as to her relationship to Joseph W. Funnel as step-daughter, and her aversion to my litigation in behalf of my deceased son, David, and myself. Martin was employed in Dan Gray's office before becoming administrator and had to have had knowledge, particularly in the latter position, of Barbara Babcock.

5. Martin's response to Plaintiff's Interrogatory No. 7 denied that he had requested the State Court Administrator's Office to refer back to him the matter of the probate of the Estate of Joseph W. Funnell deceased, P-71-232, in Oklahoma County, for a hearing on attorney fees. Martin further failed to identify any writings or persons who had any knowledge of this matter. This in particular bad faith and false. On May 16, 1985, after numerous phone and personal visits the State Court Administrator's counsel advised me that Robert Martin had requested the matter of the Probate be referred back to him solely for a hearing relating to attorneys fees and that there had been no assignment through their office of a judge for same, I filed my objections on May 17, 1985, copy attached

as Exhibit No. 4 and so advised the State Administrator's Office. The same day Chief Justice Robert Simms superseded any prior assignment to hear P-71-232. Copy attached as Exhibit No. 5. I cannot obtain an affidavit at this time.

6. Robert Martin had participated in the improper recall to Oklahoma County. A copy of a March 20, 1985 letter from Honorable Dwain Box is attached as Exhibit No. 6 with copy of envelope from Robert Martin's Office postmarked May 22, 1985. His Answer, paragraph 24, p. 5, is incomplete and evasive. After receiving Exhibit 6 I telephoned Robert Martin's office and he sounded arrogant claiming the appointment of Judge Box was proper as "he was not around here at the time the others disqualified." However, Judge Box had been a Special or Associate Judge at that time as I understand from press reports. The Administrator's office claims it has no records of his prior positions. During the aforementioned call, Martin claimed the only thing pending in the probate was the matter of the attorney fees despite several filings of mine requesting accounting.

7. Attached as Exhibit 7 is a copy of November 27, 1984, letter to Judge Arthur Rakestraw from Jonathan Burch, who was counsel for James and Harriet Funnell, acknowledging Judge Rakestraw's statement she would contact the Chief Justice of the Oklahoma Supreme Court and the Chief Judge in Oklahoma County to determine which court "has current jurisdiction" of P-71-232. From the foregoing paragraphs 5 and 6, I do not believe that Judge Rakestraw ever contacted the Chief Justice but there is an appearance of conspiracy by her disqualified fellow judges to get control of my case CJ-71-2464 and the probate P-71-232 for the purpose of awarding large and unwarranted attorney fees. In return for such favors large contributions could be and were made to judicial campaigns.

8. Martin's response to my Interrogatory No. 8 claimed no personal knowledge of pulling the record of P-71-232 but his former secretary may have "at least once for Judge Box" as she assisted Judge Box with "routine scheduling and correspondence in connection with the case." Martin further swore that court files were only removed as required in the course of his duties as Court Administrator. Contrarily, attached is Exhibit 8 which is a copy of the Court clerk's record of individual records showing that on August 1, 1986, Robert Martin himself took the file of P-71-232. There could have been no proper or needed reason as Judge Box on July 21, 1986

had stayed the case, see Exhibit 6 to Petition. That order was unable to be docketed due to the disappearance of the docket sheets form at least July 28, 1986 to August 11, 1986. This left me without ability to proceed for any possible appeal or for Writ of Mandamus, a fact known only to legal minds. The Clerk's office made numerous inquiries then told me the docket sheets were last known to be taken for Judge Box and started a duplicate to enter the said letter. Copy attached as Exhibit 9. A week later the missing sheets "reappeared" on top of a file cabinet. Copy of sheet certified August 12, 1986 attached as Exhibit 10.

9. With reference to Martin's response to my Admission Request No. 9 and Interrogatory thereto, late in the afternoon of June 4, 1984, I telephoned Robert Martin asking if Judge Ray Lee Wall had requested a court room and if a jury was to be impaneled. He said yes to the courtroom and no the jury. This led me to believe that Judge Wall intended to hear my motions only and continue the trial as I had been unable to reach Wall after my mother was hospitalized for cardiac failure. On June 5, 1984, the designated courtroom had a sign the case was to be heard in another courtroom designated by the judge's name only. The courtroom was obscured as there was no sign for such a judge and was almost impossible to find. I was upset as I had people coming and they were late finding the room, coming after the judge had dismissed the case for lack of prosecution. I believe it was part of a pattern to interfere with my possible witnesses being present.

10. With reference to Martin's response to my Interrogatory No. 10 in which he denied ever orally advising opposing counsel in any of my litigation of the appointment of a judge or hearing dates, in 1987 Martin delayed advising me of the appointment of the Judge and hearing date in a suit against an insurance company. The opposing counsel knew of the information I was delayed getting. Also the judge noted that he had not received one of my pleadings although the Oklahoma County Court Administrator had reportedly sent him all the file. After the case was over the Judge asked me if I thought the Court Administrator had acted improperly or carelessly.

11 With reference to Martin's admission to my Request No. 6 as to his removal of my court files and storing them on the top shelf of his closet and during his custody a large number of documents were missing, Martin led me to believe that Dan Gray, the then-Court Clerk was responsible. I sued Gray and his deputy

Noah Standifer on June 5, 1985 in federal court. Thereafter I was telephoned by Judge Lansden in response to an inquiry I had made and during the conversation I asked what he knew about the files being kept in Martin's closet. He denied knowing anything about it or having asked for them to be kept there. I wish to amend this action to include Martin's improper action which interfered with my case CJ-79-991 as all the pleadings of an attorney who had represented me in behalf of my deceased son David were missing and not seen by the court when it sustained a motion for summary judgment against me. I am unable to obtain an affidavit from Judge Lansden at this time as he is ill.

12. Despite two Oklahoma County judges stating that (1) all were disqualified (2) no motion regarding Martin should be heard by them. Martin continued to press for this case to be heard by one of his employers by asking for time to respond to my motion to disqualify Judge Richard Freeman who was improperly appointed by Presiding Judge Joe Cannon. This he later affirmed having asked for advice from the Supreme Court. Martin now complains about the delay in this case unfairly and in bad faith as he failed to timely respond then withheld a copy, as set forth in the attached statement now verified.

13. Because of these improper withholdings I have been unable to set forth all the issues of fact and law and have asked for extension of time to respond to the defendants motions primarily due to physical problems substantiated by orthopedist's statement. Further I will have to be able to take depositions of various judges and have refrained from taking their time until a ruling from the federal court as to the other defendants. I believe that, it is inferred that Martin is entangled in the denials of my rights and I believe there is more to be learned in that area.

FURTHER AFFIANT SAYETH NOT:

(ROBERTA ANN FUNNELL
ROBERT ANN FUNNELL

Subscribed and sworn to before me this 5th day of July, 1988.

(Angela Hunnell) Notary Public

MY COMMISSION EXPIRES:
01-24-89

Copy certified by District Court Clerk

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Filed in the District Court May 26, 1988.
(Stamped over heading, not legible)

roberta ann funnell,	)	
Plaintiff,	)	
vs.	)	CJ-87-5512
JAMES D. FUNNELL, ET ALL,	)	
Defendants.	)	

DEFENDANT, ROBERT MARTIN'S, RESPONSES TO PLAINTIFF'S FIRST INTERROGATORIES AND FIRST REQUESTS FOR ADMISSIONS

REQUEST NO. 6:

Admit that You removed the court files relating to the cases of Roberta Ann Funnell from their accustomed place to your office primarily storing them on the top shelf of your close and during you custody complaint was made a large number of documents were missing causing the remaining files to be returned to the court clerk.

RESPONSE TO REQUEST NO. 6: Admit.

REQUEST NO. 7:

Admit that You requested the State Court Administrator's Office to refer back to you the matter of the probate of the Estate of Joseph W. Funnell, deceased, P-71-232, in Oklahoma County, for a hearing on attorney fees.

RESPONSE TO REQUEST NO.7: Deny.

REQUEST NO. 8:

Admit that You removed the court documents and docket sheets relating to case P-71-232 at some time between May, 1986, and August 11, 1986.

RESPONSE TO REQUEST NO. 8: Unknown, however, Defendant admits that court files, in their entirety, may have been removed under his authority. Defendant denies removing individual documents and/or docket sheets from the court file or files. Removal of court files, if any, was accomplished in accordance with official duties required of the Defendant as Court Administrator.

INTERROGATORY NO. 8:

If You cannot admit the truth of Request No. 8, please state:

a. Why You cannot;
b. Specifically what particular part or parts of the request You cannot admit;
c. Specifically what particular part or parts of the request You can admit and the approximate dates involved;
d. Concerning those specific parts of the request that You cannot admit, state what You believe the current information should be;
e. The Identity of any and all Writings and Communications which in any way relate to his matter; and
f. The Identity of any and all persons who have any knowledge relating to this matter and, specifically, what knowledge they possess.

RESPONSE TO INTERROGATORY NO. 8:

a. See Response to Request No. 8, above. Defendant Martin has no personal knowledge of pulling such records. However, Ms. Kaufman, Defendant's former secretary, believes she may have pulled the court file at least once for Judge Box, as she assisted Judge Box with routine scheduling and correspondence in connection with the case.

b. Defendant denies pulling any individual records and/or docket sheets form any court file or files.

CERTIFICATE OF MAILING

On this 26th day of May, 1988, a true and correct copy of the foregoing was mailed, postage prepaid, to:

Mr. Robert C. Smith
First National Center West
Oklahoma City, OK 73102

Mr. B. J. Cooper
P.O. Box 1336
Oklahoma City, OK 73101

Mr. Ronald Hudson
Suite 900
211 N. Robinson
Oklahoma City, Ok 73102

Mr. Reggie Whitten
Suite 810
211 N. Robinson
Oklahoma City, OK 73102

Mr. Tom King
15 North Robinson
Suite 600
Oklahoma City, OK 73102

(Cathy Clinton Dabney)
CATHY CLINTON DABNEY

Copy certified by District Court Clerk.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Filed in district court May 15, 1987.

roberta ann funnell,	)
Plaintiff,	)
vs.	)CJ-87-5512
JAMES D. FUNNELL and HARRIET HUNT FUNNELL, Individually, as Co-Executors of the Estate of JOSEPH W FUNNELL, IRREVOCABLE TRUSTS, THEIR Agents, JONATHAN W. BURCH, ARNOLD D. FAGIN, STEPHEN JONES, RONALD R. HUDSON and HOLLOWAY, DOBSON, HUDSON & BACHMAN, a Professional Corporation, and ROBERT MARTIN,	)
Defendants.	)

PETITION

FIRST CAUSE OF ACTION

I.

This action is brought pursuant to Title 42 U.S.C. § 1983 and laws of Oklahoma. This action was first filed on June 5, 1985, against the above named defendants with the exception of Robert Martin in the United States District Court for the Western District of Oklahoma as case number CIV-85-1489 A. On May 15, 1986, plaintiff filed an Application for Admin- istrative Closing or in the Alternative Notice of Dismissal Without Prejudice as she was recovering from a car accident. On May 16, 1986, the Federal Court denied plaintiff's request and the Federal Court Clerk failed to timely mail a copy of the Order, contrary to rule, then misled plaintiff by claiming no order had been entered. Plaintiff was required to respond by May 19, 1986, the same date said Clerk mailed said Order. Plaintiff filed another Notice of Dismissal Without Prejudice on May 21, 1986. Contrary to an ambiguous Federal Court Rule and 12 O.S. §2006 D., which allow an additional three (3) days whenever a party is required to act after receiving notice by mail, on June 11 and July 2, 1986, the Federal Court, which was by then without jurisdiction, entered Orders Nunc Pro Tunc deeming defendants James and Harriet Funnell, Stephen

Jones, and Arnold Fagin's Motions to Dismiss as confessed as of May 20, 1986. Appeal of said Orders is pending as appeal No. 86-1928 in the Tenth Circuit Court of Appeals.

II.

All the above named defendants sought to deprive plaintiff of her rights, privileges, or immunities secured by the Constitution and laws of the United States of America and the State of Oklahoma, and to obstruct and/or delay the course of justice. Defendants acted to deprive plaintiff of property, property rights, due process, and a fair trial, to prolong litigation and deplete the assets of the Estate of Joseph W. Funnell and the asset of Irrevocable Trusts purportedly made by Joseph W. Funnell, as hereinafter set forth.

III.

Defendants James and Harriet Funnell, Jonathan Burch, Arnold D. Fagin, Stephen Jones, Ronald R. Hudson and Charles F. Alden III, Individually and the law firm of Holloway, Dobson, Hudson & Bachman jointly and severally, were acting under the color of state law, Rules for the District Court of Oklahoma and Rules of the District Court of Oklahoma County with immune former state judge Ray Lee Wall acting invidiously using gross abuse of judicial process and deceit to prevent plaintiff from exercising her rights and privileges, as hereinafter set forth. The defendants acted with malice, willful and wanton disregard for law and the rights of plaintiff.

IV.

Plaintiff has a judgment against defendants James D. Funnell and Harriet Hunt Funnell as co-Executors of the Estate of Joseph W. Funnell, Deceased by Order and Journal Entry of April 5, 1976, in the amount of Fifteen Thousand Seven Hundred Fifty dollars ($15,750.00) with ten percent (10%) interest, in case CJ-71-2464 filed in Oklahoma County District Court. Two executions have yielded approximately Eight Hundred Fifty dollars ($850.00). Said Order by Honorable David Cook dismissed plaintiff's action relating to alleged fraud by said Co-Executors without prejudice to plaintiff's rights in the probate of the Estate but with having allowed any discovery as to the alleged fraud, although Judge Cook by Order August 30, 1974, had sustained demurrers to plaintiff's causes of action only as to James and Harriet Funnell as individuals.

V.

While plaintiff's appeal of Judge Cook's Order of August 30, 1974 was pending, she refiled the alleged fraud of the Co-Executors on April 5, 1977, in the probate of the Estate. The Probate Judge, Honorable William Kessler found he had no jurisdiction and remanded the matter to Judge Cook on March 2, 1979.

VI.

The Supreme Court of Oklahoma reversed Judge Cook's sustension of demurrers as to the alleged fraud of James and Harriet Funnell as individuals holding that a cause of action had been stated against them as individuals. The Court also reversed as to demurrers to plaintiff's causes of action for recovery of sums representing debts paid by plaintiff and which, under the divorce decree, Joseph Funnell allegedly was ordered to pay, and for recovery of a federal income tax refund, both of which Harriet and James had confessed in their briefs. The Court's Mandate was filed November 6, 1978.

VII.

On March 5, 1979, plaintiff filed a Fifth Amended Petition which replead the remanded causes and refiled the action for fraud as to the Co-Executors. Additional causes included James' individual acts as to the professional corporation of Drs. Kelso & Funnell, Inc., which corporation had a disability contract with the Joseph Funnell, and James and Harriet's roles as Co-Trustees of an Irrevocable Trust Agreement of December 29, 1970. Plaintiff had not received copies of said documents until on or about April 12, 1977, from her attorney, defendant Stephen Jones who withdrew, without leave of court, just prior to the aforesaid refiling on April 5, 1977. Jones had contracted to represent plaintiff.

VIII.

Judge Cook and all other Oklahoma County judges were disqualified to hear plaintiff's cases in August 1979. Retired Judge, Honorable Merle Lansden was assigned to hear Plaintiff's pending cases including CJ-71-2464 and the probate of the Estate. Judge Lansden refused to require response to plaintiff's discovery requests and transferred case CJ-71-2464 to Honorable Ray Lee Wall who had been assigned her later filed cases.

IX.

At his first hearing on March 25, 1983, Judge Wall ordered all parties to comply with discovery by May 1, 1983. Defendants James and Harriet Funnell, whose counsel were defendants Jonathan

Burch and Arnold Fagin, failed to respond. At a hearing on June 6, 1983, said defendants openly conspired with Judge Wall to defeat plaintiff's Fifth Amended Petition and announced they would present an affidavit to support their claim the statue of limitations had run as to the disability contract.

X.

On July 6, 1983, Jonathan Burch filed an affidavit of Stephen Jones made on or about July 5, 1983, which falsely stated the period of time he had represented plaintiff and falsely stated that she had a copy of the disability contract as early as December 19, 1974, when Jones had taken a deposition of James which was never signed nor made part of the record and of which Jones had denied having a copy, although he gave a copy to plaintiff on or about April 12, 1977. Jones attached a copy of typewritten notes plaintiff had made shortly after that date for attorney William Thompson who represented plaintiff's children in litigation against James and Harriet. Said notes related to he deposition. Thompson resigned from the Oklahoma Bar pending disciplinary proceedings, moved from the state and cannot be located.

XI.

Jones also attached a copy of plaintiff's letter dated December 1974, which asked Jones to inquire if Burch had a disability contract relating to Joseph. Jones affidavit claimed he had marked out other statements which related to discovery and were made in confidence but neither plaintiff's copy nor the court file copy had been so marked at the time. Plaintiff learned on July 7, 1983 that Jones had been in conspiracy with all the above named defendants to defeat her claims against attorneys and her claims against the estate although Jones had made contracts in 1971 and 1973 to pursue said claims against the estate.

XII.

Defendants Ronald Hudson, Charles F. Alden III, and the law firm of Holloway, dobson, Hudson & Bachman had appeared in behalf of Jones in a breach of contract and legal malpractice case brought by plaintiff and her children. Said defendants had also appeared in case CJ-71-2464 in behalf of defendants Burch and Fagin who were dismissed from the Fifth Amended Petition by the running of the statute of limitations on service of process. All the defendants except Martin had access to the confidential information from plaintiff to Jones.

XIII.

Judge Ray Lee Wall aided the conspiracy by refusing to enforce his discovery order of March 25, 1983, by disregarding plaintiff's affidavit and exhibits disputing the claims of Jones and the defendants in CJ-71-2464, by issuing contradictory, confusing orders on March 23, 1984, which were contrary to the Supreme Court Mandate in that he set only the fraud action against the estate for trial on June 5, 1984, and sustained demurrers as to the other causes of action of the Fifth Amended Petition. As to discovery Judge Wall claimed he could not "think of any rock that had not been overturned." When plaintiff objected to all the foregoing Judge Wall invited her to take it to the Supreme Court. Burch and Fagin failed to enter a Journal Entry, contrary to court rule and Judge Wall disregarded plaintiff's motion to comply with the law by memorializing the record. Plaintiff filed an appeal of the March 23, 1984 orders.

XIV.

On or about May 10, 1984, defendant James Funnell through Burch submitted answers to part of plaintiff's interrogatories and submitted documents which led plaintiff to hire a documents examiner as to their authenticity. In 1975 plaintiff had learned that her name had been forged to a Quit Claim Deed for property that should have been in the Estate but had been sold based on said forgery with the aid of defendant Arnold Fagin. On May 22, 1984, Plaintiff took a deposition from James Funnell with a request for certain documents. James appeared with defendant Jonathan Burch and Ronald Hudson acting as their attorney. Ronald Hudson, contrary to law, refused to allow copies of documents and refused to allow originals to be admitted contrary to law. During the deposition it became apparent that at least two documents which had admittedly been in the custody of Burch bore forged signatures purporting to be those of Joseph W. Funnell. James admitted he could not state the signatures were those of Joseph Funnell.

XV.

On May 23, 1984, plaintiff notified Judge Wall by copy of a Motion to Identify and Annex Original Documents to Deposition that a documents examiner was required. On [May] 25, 1984, plaintiff filed a Motion for Continuance based on same. On [May] 17, 1984, defendants Burch and Fagin sent plaintiff a copy of a letter to Judge Wall requesting a "pre-trail (sic) conference to establish witnesses, evidence and the scope for the issues relevant to the trial."

XVI.

No such pre-trial conference was scheduled nor held. Instead the said defendants conspired with defendants Ronald Hudson, Charles F. Alden and Holloway, Dobson, Hudson& Bachman and with Judge Wall to falsely claim that the pre-trial conference required by law to establish issues, witnesses and submission of all documents and exhibits had taken place on March 23, 1984, which was also contrary to Court Rules numbers 21, 22, and 23 of the Court Rules of the District Court of Oklahoma County. Said defendants and Judge Wall were selectively applying the Court Rules to deny plaintiff's right to discovery by claiming that Rule number 23 (H) required all discovery had to be completed before the pre-trial conference.

XVII.

On June 4, 1984, plaintiff telephone Judge Wall's office in Stillwater to advise him that her mother had entered the hospital in congestive heart failure and was advised that Judge Wall had already left for "the Funnell case in Oklahoma City." Plaintiff was advised by Robert Martin that that day Judge Wall had requested a courtroom for June 5, 1984. Robert Martin had a practice of checking our plaintiff's court files and keeping them in his office.

XVIII.

On June 5, 1984, plaintiff and all the defendants except Martin appeared. Fagin asked James, "Now can you rely on us?" as they all appeared very assured. Judge Wall immediately signed an Order regarding the March 23, 1984, "pre-trial conference" and changing the issues from the Orders of March 23, 1984. A copy of said Order filed June 5, 1984, is attached as Exhibit 1 and incorporated herein. A copy of the Minute of March 23, 1984, filed March 26, 1984, is attached and incorporated herein as Exhibit 2. Judge Wall stated that "someone" had talked with him who didn't want the case continued. Without allowing plaintiff to present her pending motions Judge Wall overruled the Motion for Continuance and immediately called the case for trial although the issues had just been made up. No Answer had been filed until June 1, 1984 and that had failed to clarify the issues. Judge Wall acted contrary to state law which requires the issues be made up at least ten days before trial. Despite plaintiff's objections and stated needs for the documents to be produced and examined Judge Wall asked the defendants for any motions and sustained their motion for dismissal. A copy of their Journal Entry is attached and incorporated as

Exhibit 3. Judge Wall's action was further contrary to law which requires a jury trial of plaintiff's case.

XIX.

Upon learning that James had changed his deposition testimony from what was on the reporter's tapes, plaintiff filed for a Writ of Mandamus or Prohibition in the Supreme Court as to the dismissal and asking emergency protection of the documents which had been refused to be attached to the deposition. The Referee would not hear plaintiff's petition until a month later and urged her to file an appeal, although a prior case had held that a Writ of Mandamus was the appropriate route in unlawful dismissals. The Supreme Court refused to take original jurisdiction and in the meantime plaintiff had filed her appeal due to time constraints.

XX.

Plaintiff's rights to due process were seriously impaired and her post-deprivation relief was unconstitutional in that it denied her rights to assure that the documents would not be altered further and her property rights no further delayed. The Oklahoma Supreme Court did not call for the record of her appeals until March 4, 1987, so as to make assignment to a justice. **Plaintiff was denied access to Courts.**

XXI.

The defendants and Judge Wall also conspired to delay the case so that James could attend an out of state wedding of his son immediately after the case was unlawfully dismissed. Judge Wall invited motions for attorney fees which were filed as to Fagin and Hudson, Alden and the Holloway firm. No rulings could be properly made and defendants then conspired to make application for nearly $42,000.00 in fees to Judge Arthur Lory Rakestraw, who was disqualified and without jurisdiction. The same time of said application and without the required hearing and testimony, Judge Rakestraw ordered the payment of those fees and any further attorney fees incurred in the defense of case CJ-71-2464, Appeals derived therefrom an any other litigation by plaintiff comprising substantially the same cause of action as CJ - 71-2464. A copy of the Application for Attorney Fees dated July 31, 1984 is attached and incorporated as Exhibit 4. A copy of the order for Attorney Fees dated July 31, 1984., is attached as Exhibit 5.

XXII.

Plaintiff did not learn of the aforesaid Order of July 31, 1984 until in September 1984, after Hudson telephoned her urging that

she dismiss her appeals and "refile the case as though March 23, 1984 had not taken place,"but insisted that Judge Wall hear the matter although plaintiff had filed for his disqualification. Plaintiff declined and defendants filed a similar offer in the Supreme Court which held it in abeyance until the merits assignment, which has not been made these three years hence. Judge Rakestraw's Order was for payment from the Estate "as the Estate has assets to make such payments."

XXIV.

Plaintiff filed objections and demands for accountings as well as Motion to Vacate the Order for Attorney Fees. Judge Rakestraw stated she would seek the advice of the Chief Justice. On or about March 25, 1985, Petitioner received a letter from Retired Judge, Honorable Dwain Box, that he had been assigned to her the probate case, P-71-232, for a hearing on an Award of Attorney Fees. On or about May 16, 1985, plaintiff learned that the Chief Justice had not assigned Judge Box but rather that Robert Martin had entered the conspiracy by asking the State Court Administrator's office to refer the probate matter back to him for a hearing on attorney fees, although then Presiding Judge, Raymond Naifeh, now deceased, was also disqualified to appoint any judge to hear the matter.

XXV.

Plaintiff notified the office of the Chief Justice who immediately signed an Order superseding any prior assignment and assigning Judge Box until final disposition of case P-71-232. Judge Box refused plaintiff's Application Directing Judgment Debtors to Answer Concerning Property. Plaintiff by law was required to make an Execution on her Judgment of April 5, 1976, before August 1985 and it being apparent some $21,000 was unaccounted for in the Estate, executed against bank account numbers she had obtained in mid-May 1985 from records at the First National Bank which had been a Co-Trustee of a large trust financed by life insurance policies on Joseph Funnell. The Liberty Bank improperly withdrew money from an account of Harriet Funnell designated as a Trust account and on August 5, 1985 a Motion was filed to discharge the execution but failed to send a copy to plaintiff. Arnold Fagin set the matter before Judge Cook and conspired with him and Judge Box for the matter to be assigned and heard by Judge Box although the execution and Motion for discharge were filed in CJ-71-2464 which had not been assigned to Judge Box by the Chief Justice. On August 7, 1985 Arnold Fagin refiled the Motion to discharge execu-

tion showing it set before Judge Box. Judge Box entered a Minute and an Order discharging the execution in CJ-71-2464 on August 13, 1985. The same date Judge Box advised plaintiff to take all the time she needed to respond to a brief of James and Harriet as to her standing to make objection to the attorney fees in the probate, due to injuries. Judge Box acquiesced to Fagin's fee request from probate.

XXVI.

After plaintiff filed her action in the federal court which had included the matter of the attorney fees as part of the conspiracy to deny her rights, a campaign of harassment was begun. Judge Box sent request for plaintiff to respond as to the attorney fees within the two weeks of holiday season. Plaintiff indicated physician's orders to avoid "fine use of hands," but Judge Box disregarded it demanding a response. Although Plaintiff had filed an earlier brief and made a letter response as to law, Judge Box ruled she had not filed a brief and determined that the objection to the allowance for attorney fees was prematurely filed and therefore denied. This had a very chilling effect on plaintiff's pursuit of her property rights. Judge Box also issued an Order in P-71-232 regarding the August 13, 1985 hearing on the execution in CJ-71-2464.

XXVII.

On July 21, 1986, Judge Box filed a letter/order, copy attached and incorporated herein as Exhibit 6, staying Plaintiff's Objections of Creditor filed May 9, 1986 which demonstrated a deficiency of $16,000.00 in the first estate accounting since the probate inception. This was contrary to law and plaintiff filed for Writs of Mandamus and or Prohibition as to the Orders of Judge Box and Judge Rakestraw. The Attorney General's office, after contacting Judge Rakestraw and Burch, argued that plaintiff could have appealed the orders and the Supreme Court refused to take original jurisdiction although Judge Rakestraw's order was not discovered until after the thirty day time limit and Judge Box's Order could not be construed as a final Order from which to take an appeal. Again the post-deprivation of rights relief was not viable. Plaintiff ***interalia*** sought prohibition of legal fees for August 13, 1985.

XXVIII.

Defendants had further conspired to interfere with plaintiff's Appeal of the Orders in CJ-71-2464 by defendant Hudson's office taking the file from the courthouse and keeping it for several weeks during which time the statements of plaintiff's letter to Jones

referred to in paragraph XI above were marked through although plaintiff had made an affidavit to the contrary. She discovered the tampering about June 8, 1985.

XXIX.

Plaintiff was delayed and hampered from acting on the July 21, 1986 Order by Judge Box as said Order was not docketed and the docket sheets for P-71-232 were last known to be seen when Judge Box requested to see the records and reportedly took some to Judge Cook. Response to inquiry at Judge Cook's office was that Judge Box had been there regarding "some transfers of cases."Robert Martin had requested that Plaintiff's records be brought to him. The docket sheets "appeared" on top of a filing cabinet in the Clerk's office on August 11, 1986, after plaintiff and the court clerk's office had made inquiries.

XXX.

On or about May 14, 1985, plaintiff learned that the first National Bank and Trust Company of Oklahoma City had been given the information that there was $54,000.00 to some $56,000.00 of income to the Estate in 1971 and that there was $50,000.00 in "irrevocable trusts, Harriet and Jim Funnell, trustees". Additionally, there was some $96,000.00 in insurance not accounted for by the aforementioned Life Insurance Trust. Apparently there was $30,000.00 in a safe or safety deposit box. James and Harriet Funnell, Burch and Fagin had depleted the Estate by paying income taxes that arose from trusts and monies not in the Estate. The Estate original inventory was only $24,000.00.

WHEREFORE, in consideration of the premises, Plaintiff Roberta Ann Funnell, respectfully prays for the actual damages for her judgment and interest to date in the amount of $33,000.00, for unpaid bills in the amount of $54,597.45 and for punitive damages for fraud, malice and deceit in the amount of $100,000.00 as allowed by the Supreme Court mandate, and the sum of $1,000,000.00 as punitive or exemplary damages for violations of the rights, privileges or immunities of plaintiff over and against defendants jointly and severally, James D. Funnell, Harriet Hunt Funnell, individually, as Co-Executors of the Estate of Joseph W. Funnell, Deceased and as Co-Trustees of Joseph W. Funnell Irrevocable Trusts, Jonathan Burch, Arnold Fagin, Stephen Jones, Ronald R. Hudson and Charles F. Alden III, Individually and Holloway, Dobson, Hudson & Bachman, a Professional Corporation and Robert Martin,

together with such other and further relief entitled under equity and law.

SECOND CAUSE OF ACTION

This action is brought pursuant to Title 42 U.S.C.S. 1985 and the laws of Oklahoma. Plaintiff repleads her First Cause of Action against defendants and avers that defendants conspired to impede, hinder, obstruct or defeat the due course of justice with the intent to deny equal protection of the laws, or to injure her for lawfully enforcing or attempting to enforce her rights of property. Plaintiff was discriminated against because she is a pro se litigant and contrary to the holdings of the Supreme Court of the United States the Supreme Court of Oklahoma has held her to the standards of an attorney. The defendants while conspiring with various named state judges have used confusion, deceit,threat and intimidation to achieve their purposes. Defendant Fagin threatened plaintiff that the litigation has gone on ten years and can go ten more. The Orders of Judges Wall, Rakestraw and Box have interfered with plaintiff's rights and the interest of justice while concealing the wrong doings of officers of the court. Plaintiff was denied access to the Courts.

WHEREFORE, in consideration of the premises, plaintiff Roberta Ann Funnell, respectfully prays for the actual damages for her judgment and interest to date in the amount of $33,000.00, for unpaid bills in the amount of $54,597.45 and for punitive damages for fraud, malice and deceit in the amount of $100,000.000 as allowed by the Supreme Court Mandate, and the sum of $1,000,000.00 as punitive or exemplary damages for violations of rights of plaintiff by impeding, hindering, obstructing, or defeating the due course of justice against defendants jointly and severally, James D. Funnell, Harriet Hunt Funnell, individually,, as Co-Executors of the Estate of Joseph W. Funnell, deceased and as Co-Trustees of Joseph W. Funnell Irrevocable Trusts, Jonathan Burch, Arnold Fagin, Stephen Jones, Ronald R. Hudson and Charles F. Alden III, individually and Holloway, Dobson, Hudson & Bachman, a Professional Corporation and Robert Martin, together with such other and further relief to which plaintiff might show she is entitled at law or in equity, or both law and equity.

(Roberta Ann Funnell)
ROBERTA ANN FUNNELL
2306 S.E. 49th Street

Oklahoma City, Oklahoma 73129
(405)670-1943
Plaintiff requests a jury trial.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Filed in District Court June 5, 1984.

ROBERTA ANN FUNNELL,	)	
Plaintiff,	)	
v.	)	CJ-71-2464
HARRIET HUNT FUNNELL and JAMES D.	)	
FUNNELL, Individually and as	)	
Co-Executors of the Estate of	)	
JOSEPH W. FUNNEL, Deceased,	)	
Defendants.	)	

ORDER

Now on this 23rd day of March, 1984, the above entitled cause comes on for pre-trial conference, and for disposition of outstanding motions and the framing of issues pursuant to regular assignment; plaintiff appears in person pro se; and the defendants appear by counsel.

The Court having reviewed the pleadings and having heard the statements and arguments on behalf of the respective parties finds and orders as follows:

1. Plaintiff's application for leave to amend or supplement the fifth amended petition is overruled.
2. Plaintiff's motion for default judgment is overruled.
3. The demurrer of Joseph W. Kelso in all capacities, and of Kelso and Funnell, Inc., and its successors, is sustained.
4. All claims against defendant James Funnell as to his corporate capacity relating to Kelso and Funnell, Inc., are stricken and the demurrer as to corporate capacity is sustained.
5. All claims against defendants James and Harriet Funnell relating to the 1961 trust is sustained.
6. Demurrer is sustained as to plaintiff's first, second, third, and fourth causes of action except as to plaintiff's claim for unpaid bills in the principal sum of $19,053.84.
7. Interrogatories are to be answered on or before May 5, 1984.

8. This case is set for trial on June 5, 1984, in Oklahoma County on the issue of fraud and plaintiff's claim for unpaid bills.

9. All claims, causes of action or parties as to which demurrers have been sustained are dismissed from the action with exceptions.

IT IS SO ORDERED:

(Ray Lee Wall
Ray Lee Wall, District Judge

Copy certified by District Court Clerk.

EXHIBIT 1

DISTRICT COURT
9th Judicial District, State of Oklahoma
Logan and Payne Counties
STILLWATER, OKLAHOMA 74074

Filed in Oklahoma County District Court March 26, 1984.
Minute -- Ray Lee Wall, District Judge
Assigned
March 23, 1984

CJ-71-2464

Application for leave to amend or supplement the Petition is overruled with exception. Motion for Default Judgment of the plaintiff is overruled with exception. Demurrer of Dr. Kelso and Funnell & Kelso, Inc., as to the Fifth Amended Petition is sustained based on the running of the statue of limitations. The demurrer as to Dr. James D. Funnell as to his corporate capacity is sustained. It's overruled as to all other capacities. Demurrer of Dr. James Funnell as his capacity as co-executor of the estate as it relates to the 1961 trust is sustained. The first cause of action and the second cause of action, the demurrer as to Dr. James Funnell, individually, and in all other capacities is sustained. The third cause of action, the demurrer as to the 1961 trust is sustained as the statute of limitations has run. The fourth cause of action, the demurrer is sustained. Fifth cause of action the demurrer is sustained as to

individual liabilities. That would apply to all parties. These rulings apply the same as to all defendants as to that cause of action. Exception granted to the plaintiff. Cause of action for fraud is set for trial in Oklahoma County, June 5, 1984 at 9:00 A.M. Interrogatories are to be answered on or before May 5, 1984.

cc: Court Clerk, Oklahoma County
Roberta Ann Funnell
Jonathon Burch
Arnold D. Fagin

Copy certified by District Court Clerk.

EXHIBIT 2

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Filed in District Court June 13, 1984.

ROBERTA ANN FUNNELL,	)	
Plaintiff,	)	
v.	)	CJ-71-2464
HARRIET HUNT FUNNELL	)	
and JAMES D. FUNNELL, Individually	)	
and as Co-Executors of the	)	
Estate of JOSEPH W. FUNNELL,	)	
Deceased,	)	
Defendants.	)	

JOURNAL ENTRY

Now on this 5th day of June, 1984, the above styled and numbered cause comes on before me, the undersigned Judge of the District Court of Payne County, Oklahoma, sitting by special appointment of the Supreme Court of Oklahoma. Plaintiff appears in person, pro se; and the defendant, Harriet Hunt Funnell, appears in person and with her attorney of record, Arnold. D. Fagin, of the firm Fagin, Hewitt, Mathews and Fagin; and the defendant, James D. Funnell, appears in person and with counsel, Ronald R. Hudson and Charles F. Alden, III, of the firm of Holloway, Dobson, Hudson

and Bachman, and Jonathan W. Burch of the firm of Burch and Burch.

Whereupon, the case is called for trial in open court and defendants each announced ready for trial, and the plaintiff, Roberta Ann Funnell, announced not ready for trial, and presented a motion for continuance which had been filed on the 25th day of May, 1984. And, the Court after hearing the arguments and statements of the plaintiff, and the arguments and statements of counsel for the defendants, and otherwise being fully advised in the premises, finds and orders as follows:

1. That this matter, after notice to the parties, was pre-tried on March 23, 1984.

2. That at the pre-trial conference this matter was set for jury trial on June 5, 1984, and all parties, including the plaintiff, were notified of such trial setting in open court.

3. That the issues between the parties have been made up.

4. That this case was filed in 1971, and has been pending for many, many years whereby the plaintiff should be ready for trial and prepared to proceed.

5. That, otherwise, the plaintiff has failed to satisfy the Court that a ground for further delay exists, and the plaintiff's motion for continuance is overruled.

Whereupon, the plaintiff refused to proceed to trial as directed by the Court on March 23, 1984, and this action should be dismissed.

Exhibit 3 on 2

IT IS, THERETO, ORDERED, ADJUDGED AND DECREED by the Court that this action be and the same is hereby dismissed and the defendants are hereby authorized to make application to the Court for the taxation and assessment of costs, attorney fees necessarily incurred in the preparation of this case for trial, together with other appropriate relief.

(Ray Lee Wall)
Ray Lee Wall
District Judge

APPROVED AS TO FORM:

(Charles F. Alden, III
Attorney for Defendants

Copy certified by District Court Clerk.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Filed in district court July 31, 1984.

IN THE MATTER OF THE ESTATE OF	)
	) P71-232
JOSEPH W. FUNNELL, DECEASED	)

APPLICATION FOR ATTORNEY FEES

Come now HARRIET HUNT FUNNELL and JAMES D. FUNNELL, Co-Executors of the Estate of JOSEPH W. FUNNELL and respectfully show the Court as follows:

1. That the Estate has been open since 1971, that various attorney fees have been incurred for probate of the Estate, preparation of estate tax returns and defense of thirteen years of litigation and appeals, filed by Roberta Ann Funnell against the Estate and the Co-Executors, to defend various and sundry legal attacks of the probate proceedings, including a will contest filed in the probate case as well as the District Court, various creditors claims, attacks on the inventory of assets, the administration of claims, and various expensive attacks on other acts of administration of the estate, attempts to disqualify judges and disqualify attorneys, including attorneys for the Co-Executors, and including six trips to the Supreme Court under case Nos. 47829, 54217, 59204, 62186, 62495, and 62658. The root case out of which these appeals derived is CJ-71-2464.

2. That the attorney fees for the following attorneys for the legal services rendered to the Co-Executors for the benefit of the Estate of Joseph W. Funnell, Deceased are reasonable and should be allowed by this Court:

a. Dick & Dewbre - $8,000.00

Exhibit 4 on 3

b. Burch, Burch & Wilkinson - $3,500.00
c. Fagin, Hewett, Mathews & Fagin - $2,471.13
d. Holloway, Dobson, Hudson & Bachman - $14,709.44

e. Burch & Burch - $9,067.50

f. Foliart, Mills & Neimeyer for defense of will contest and creditors claim, $4,106.25

3. That this Court should approve the above described attorney fees as administration expenses of the Estate of JOSEPH W. FUNNELL, Deceased, and approve as administration expenses of the Estate any further attorney fees incurred by the Co-Executors in defense of CJ-71-2464 or similar cases by said Plaintiff, or as necessary to finally conclude probate of estate.

4. That the Co-Executors personally, and other persons have paid, and may pay some or all of these attorney fees, due to the limited financial resources of the estate, that these persons stand in the same position as the Estate with respect to priority of payment of estate expense, taxes and debts, that expenses of administration, including attorneys fees, have priority over all other obligations of the Estate, (***Tim's Funeral Home V. Phillips,*** Okl. 501 p.2d 493 (1972) and that to the extent that the estate at any time has assets with which to repay these persons for payment of Estate administration expenses, the Co-Executors should be ordered to repay such persons, including themselves in their personal capacity.

WHEREFORE, the petitioners pray that this Court enter its order approving the above described attorneys fees as administration expenses of the Estate of JOSEPH W. FUNNELL, Deceased, and order the Co-Executors to pay such fees as they have funds in the Estate to do so, or to repay those persons, including the Co-executors as individuals and any other persons, individual, corporate or fiduciary, who have paid or will pay such fees to such attorneys in lieu of payment by the Estate.

(Harriet Hunt Funnell
HARRIET HUNT FUNNELL

(James D. Funnell
JAMES D. FUNNELL

Jonathan W. Burch
OBA #001315
2603 First National Center
Oklahoma City, OK 73102
(405) 236-1686

Copy certified by District Court Clerk

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Filed in district court July 31, 1984.

IN THE MATTER OF THE ESTATE)
OF)P-71-232
JOSEPH W. FUNNELL, DECEASED)

ORDER FOR ATTORNEY FEES

HARRIET HUNT FUNNELL and JAMES D. FUNNELL, Co-Executors of the Estate of JOSEPH W. FUNNELL having made application for an order approving certain attorney fees; and it appearing to the Court from evidence introduced, that the fees are reasonable and proper.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that the following attorneys fees are approved as administration expenses of the Estate of JOSEPH W. FUNNELL, Deceased:

a.	Dick & Dewbre	$8,000.00
b.	Burch, Burch & Wilkinson	$3,500.00
c.	Fagin, Hewett, Mathews & Fagin	$2,471.13
d.	Holloway, Dobson, Hudson	$14,709.44
e.	Burch & Burch	$9,067.50
f.	Foliart, Mills & Neimeyer	$4,106.25

IT IS FURTHER ORDERED ADJUDGED AND DECREED that persons, other than the Co-Executors in their capacity as Co-Executors, that have paid any of these fees or pay any of these fees in the future or any further attorney fees incurred by the Co-Executors in defense of Oklahoma County District Court Case No. CJ-71-2464, appeals derived therefrom or other litigation by Roberta Ann Funnell comprising substantially the same causes of action as CJ-71-2464, are entitled to reimbursement from the assets of the Estate and that such reimbursements will be administration expenses of the Estate having priority over other payments by the Estate, and the

Exhibit 5 on 2

Co-Executors are ordered to pay the fees approved above and to reimburse any person that pays any such obligations of the Estate,

as the Estate of JOSEPH W. FUNNELL, Deceased has assets to make such payments.

Date this (31st) day of July, 1984.

(Arthur Long Robertson)
DISTRICT JUDGE

Jonathan W. Burch
OBA #001315
2603 First National Center
Oklahoma City, OK 73102
(405)-236-1686

Copy certified by District Court Clerk.

STATE OF OKLAHOMA
COURT OF APPEALS

Dwain D. Box
Presiding Judge
Active Retired
Filed in District Court July 21, 1986.
Ms. Roberta Ann Funnell
2306 S.E. 49 St.
Oklahoma City, OK 73129
IN RE: P-71-232 In the Matter of the Estate of Joseph W. Funnell, Deceased.

Dear Ms. Funnell:

Please be advised that your Objection of Creditors filed by you on May 9, 1986, has been prematurely filed. Therefore, I am ordering it stayed until a hearing on the final accounting. Same to be filed when all the cases now pending have been disposed of.

Respectfully,
Dwain D. Box, Assigned Judge

DDB/vk

cc: Mr. Arnold Fagin, Mr. Jonathan Burch, Mr. Ronald Hudson, Mr. Charles F. Alden

Certified copy signed by District Court Clerk.

Exhibit 6